



Neutral Citation Number: [2019] EWHC 3526 (TCC)

Case No: HT-2015-000181

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2019

Before :

MRS JUSTICE JEFFORD DBE

Between :

(1) NUA FACADES LIMITED
(2) NUA INTERIORS LIMITED
(3) SILK PROPERTY DEVELOPMENTS
LIMITED

Claimants

- and -

TERRY BRADY
t/a TERRY BRADY DEVELOPMENTS LIMITED

Defendant

James Bowling and Daniel Khoo (instructed by Vyman Solicitors) for the Claimants
Anthony Speaight QC (instructed by Goodman Derrick LLP) for the Defendant

Hearing dates: 8 November 2019

Approved Judgment

MRS JUSTICE JEFFORD:

Introduction

1. The dispute between these parties was the subject of a three week trial in the Technology and Construction Court, followed by written and oral closing submissions. My judgment in this matter was handed down with the citation [2019] EWHC 2184 (TCC). All consequential matters were adjourned. On 8 November 2019, I heard a series of applications (some of which were adjourned part heard) relating to interest and costs. The claimants were very largely successful in the substantive proceedings and the defendant's defences, which were founded on allegations of fraud, dishonesty and duress, failed. The principle that the defendant should pay the claimants' costs was not, therefore, in dispute. The claimants, however, sought an order for costs on the indemnity basis and the basis of assessment was disputed. At the hearing, I ruled that the defendant should pay the claimants' costs on the indemnity basis. I gave brief oral reasons for that ruling and I undertook to provide the parties with fuller written reasons in due course. These are those reasons.
2. The distinction between assessment on the standard and the indemnity basis is set out in CPR Part 44.3. If the costs are to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. The matters in issue and the proportionality of the costs to those matters may involve consideration of the value of the claim. I say "may involve" because plainly, if serious allegations of dishonesty are made, those are also matters in issue and the value of the claims or counterclaims may take on less significance. In any event, if the costs are assessed on the indemnity basis, proportionality is not an issue and any doubt as to whether costs were reasonably incurred or as to the reasonableness of the amount is resolved in the receiving party's favour. In the present case, the claimants' actual costs are said to be in the region of £1.1 to £1.3 million and, therefore, on a similar scale to value of the claims. Thus the issue of proportionality is potentially of particular relevance.

Background to the application for indemnity costs

3. The background to this application is, of course, set out in my judgment. In summary, there was an extremely lengthy background to this trial. The various agreements sued on by the claimants were entered into towards the end of 2012 or in very early 2013. They have variously been the subject matter of statutory demands and adjudications before these proceedings were commenced in April 2015. The proceedings then took well over three years to come to trial during which time there was an early neutral evaluation (which did not lead to a settlement), numerous interlocutory applications, and the trial date was put back twice.
4. My criticism of the defendant's pleaded case, and the allegations that the claimant companies faced, is set out in some detail in my substantive judgment and referred to further below. In short, the claimant companies faced allegations of having made a multitude of bribes in the context of a culture of corruption which involved allegations of bribery by others. The bribes were said to evidence or amount to a fraudulent conspiracy. The end result of that culture of corruption and that conspiracy was the various agreements which the claimants sued upon and which the defendant, very shortly after those agreements were entered into, sought to argue were unenforceable. As set out in my substantive judgement that case changed significantly at trial.

5. It is fair to say, however, that Mr Singh, the principal of the claimant companies, was “no angel”, to adopt a phrase that he himself used, and that he was guilty of improper or at the very least unwise conduct on other occasions. That might not be thought to be the most auspicious starting point for an application for indemnity costs but that is the application that the claimants made and, for the reasons set out in this ruling, it is an application that was successful.

Legal principles

6. The starting point is, of course, the Civil Procedure Rules themselves. Part 44.2(1) provides that, in deciding what order to make in respect of costs, the court should have regard to all the circumstances which include “the conduct of all the parties”. It is important to emphasise the reference to all the parties. Part 44.2(5) provides:
“(5) The conduct of the parties includes –
(a) conduct before, as well as during, the proceedings
(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”
7. It is common ground between the parties that there is a balancing exercise to be carried out and one that has regard to the conduct of all parties. There is no overarching principle that indemnity costs ought only to be ordered if the conduct of one party is wholly unreasonable or in some other way attracts the moral condemnation of the court. As Mance LJ said in *ABCI v Banque Fraco-Tunisienne* [2003] EWCA Civ 205 at [70] “*There is nothing in the rules which says expressly that the Court should not make an order for indemnity costs unless it finds the paying party’s conduct unreasonable, let alone wholly unreasonable. Decisions of this Court in particular cases should be read with this very much in mind.*”
8. The critical requirement, however, is that there must be some conduct or circumstance that takes the case out of the norm. That is how the point was put by Lord Woolf in *Excelsior Commercial & Industrial Holdings Limited v Salisbury Hammer Aspden & Johnson* [2002] EWCA Civ 879. In that case, Lord Woolf declined to add to the requirements of the Civil Procedure Rules. He indicated, however, his agreement with what was said in *Kiam v MGN Ltd.* [2002] EWHC 9018 to the effect that, in a case of non-acceptance of an offer of settlement, there would need to be something more, amounting to conduct that was unreasonable to a high degree, to justify the making of an indemnity costs order. In subsequent cases, conduct that was unreasonable to a high degree has often been regarded as necessary to justify an order for indemnity costs. It seems to me that that is properly to be seen as one basis on which such an order might be justified and, indeed, the most common one.
9. Self-evidently each case turns on its own facts but the numerous authorities on indemnity costs illustrate, at the least, types of cases in which conduct has been or may be regarded as falling outside the norm or, it might be said, that is conduct that is so unreasonable that it falls outside the norm and justifies an order for indemnity costs. Particular examples include those where the case is thin or speculative or founded on a nebulous basis and where the claim or defence, in due course, fails. Unsuccessful allegations of fraud may themselves found an order for indemnity costs. Wholly

unreasonable conduct, or conduct that is unreasonable to a high degree, before or during the currency of the proceedings, may well take the case outside the norm.

10. In *JP Morgan Chase Bank v Springwell Navigation Corporation* [2008] EWHC 2848 (Comm), Gloster J (as she then was) undertook a thorough review of the authorities. Her conclusion was that she bore them in mind but reminded herself that her discretion was a wide one that depended on all the circumstances of the case. Gloster J awarded Chase some of its costs of the action on the indemnity basis. Her reasons for doing so included the following (at [13]):

“(iv) Every point that could be taken was taken by Springwell. In many areas of the case unsubstantiated allegations were made. Chase, of necessity, had to deal with such claims in laborious detail. But, in my judgment, if a party chooses to litigate a commercial case of this sort on such a wide and extravagant canvass, he must take the risk that, ultimately, if unsuccessful, he may have to pay the costs of the exercise on an indemnity basis. Such a sanction, if nothing else, is a salutary means of encouraging focus, restraint and proportionality in heavy commercial disputes.

(v) Springwell raised, and pursued, various serious allegations of dishonesty, impropriety and deceit against Chase, in respect of both the pre-default and default claims. certain of the allegations of dishonesty and deceit against JA were dropped very shortly before trial. But others were persisted in, although effectively dropped after cross-examination of Chase witnesses.

(vi) Further serious allegations of impropriety were made in respect of Chase’s conduct in respect of the post-default period These allegations were rejected by me. The fact that a party chooses to raise and pursue allegations of fraud and impropriety and then abandons them shortly before trial, or alternatively, seeks to make them good, are well-established reasons for an award of indemnity costs.”

11. Amongst the cases reviewed by Gloster J and relevant to the present case were the following:

- (i) In *Three Rivers v BCCI SA* [2006] EWHC 816 at [25], Tomlinson J summarised the principles to be derived from the authorities as follows:

“(1) The court should have regard to all the circumstances of the case and the discretion to award indemnity costs is extremely wide.

(2) A critical requirement before an indemnity costs order can be made in the successful defendant’s favour is that there must be some conduct or some circumstance which takes the case out of the norm.

(3) In so far as the conduct of the unsuccessful claimant is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness.

(4) The court can and should have regard to the conduct of the unsuccessful claimant during the proceedings, both before and during the trial, as well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations.

(5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

(6) A fortiori, where the claim includes allegations of dishonesty, ... and those allegations are pursued aggressively inter alia by hostile cross-examination”

- (ii) In *Balmoral Group Ltd. v Borealis (UK) Ltd.* [2006] EWHC 2531 (Comm), Christopher Clarke J adopted Tomlinson J's summary and added (at [1]):
“*The discretion is a wide one to be determined in the light of all the circumstances of the case. To award costs against an unsuccessful party on an indemnity scale is a departure from the norm. There must, therefore, be something – whether it be the conduct of the claimant or the circumstances of the case – which takes the case outside the norm. It is not necessary that the claimant should be guilty of dishonesty or moral blame. Unreasonableness in the conduct of the proceedings and the raising of particular allegations, or in the manner of raising them may suffice. So may the pursuit of a speculative claim involving a high risk of failure or the making of allegations of dishonesty that turn out to be misconceived,*”
- (iii) Tomlinson J's summary was also adopted by Colman J in *National Westminster Bank plc v Rabobank Nederland (No. 2)* [2007] EWHC 1742 (Comm). The judge emphasised that Tomlinson J's paragraphs (4) to (8) identified specific patterns of conduct capable of rendering a party's overall conduct relevantly unreasonable or inappropriate and which, taken alone, or in combination, might in all the surrounding circumstances often be capable of giving rise to a conclusion that the losing party's conduct has been so unreasonable and inappropriate overall as to justify an indemnity costs order. It was, he said, “*important not to lose sight of the essential requirement of unreasonable or inappropriate conduct overall and not to treat examples of such which may amount to such conduct as necessarily constituting it*”.
12. The earlier cases referred to in *Springwell* are largely focussed on the conduct of the unsuccessful claimant (or counterclaimant as in the *Rabobank* case) and whether that party's conduct was sufficient to justify an indemnity costs order against it. The requirement of unreasonable conduct on the part of the unsuccessful claimant and paying party is one way of expressing the critical requirement of conduct that is out of the norm or which, as Colman J put it in the *Rabobank* case, has crossed the frontier. For the purposes of the present case, the particular significance of Gloster J's decision in *Springwell* is in the court taking a similar approach where it is the conduct of the action by the losing defendant that is in issue. The same considerations of unreasonableness in the conduct of the action arise where it is the defendant rather than the claimant who has made positive allegations of fraud and dishonesty but done so on a speculative basis. Mr Speaight QC did not seek to argue otherwise and the rules make clear that the conduct of all parties is material.
13. Mr Bowling submitted that these authorities demonstrate that the nature of the case itself or the nature of the allegations made may themselves justify an order for indemnity costs irrespective of the paying party's conduct. That is one reading of these authorities (and consistent with Colman J's observations about Tomlinson J's individual grounds) but equally, in my view, in each case what the court was identifying was conduct (within the meaning given to that phrase in Part 44.2(5)) which the court considered could and should be marked by an order for indemnity costs. Parties should not expect to face allegations that are thin and nebulous, made by another party “in the hope that something will turn up”. If a party puts its case on such a basis and loses, it takes the risk of an indemnity costs order, all the more so if the allegations are ones of serious misconduct such as allegations of fraud and dishonesty. As Morgan J put it in *Digicel (St Lucia) Ltd. v Cable & Wireless plc* [2010] EWHC 888

(Ch) at [68], the question is whether the criticisms of a party's conduct are sufficiently made out that it has forfeited the benefit of an assessment on a proportionate basis and forfeited the right to have the benefit of the doubt on reasonableness.

The parties' contentions

The claimants' case

14. The background to this application is, therefore, the wide ranging and diffuse allegations of bribery, fraudulent conspiracy and dishonest assistance made by the defendant in the circumstances more fully set out in my substantive judgment.
15. It is well established that such allegations should be pleaded with a particular degree of clarity because of the seriousness of the allegation which is made. That was not what was done in this case.
16. In ***Three Rivers DC v Bank of England (No.3)*** [2001] UKHL 16 at [184-185] Lord Millett set out the principles as follows:
"It is well established that fraud or dishonesty must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest.
It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case that is being made against him. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved."
17. On behalf of the claimants, Mr Bowling submits that the defendant's case never met these criteria. I do not fully accept that submission. The primary facts relied on were pleaded – namely the “no angels” e-mail (set out at paragraph 35 of my judgment), a small number of particularised allegations of bribery, and the discrepancy between the true value of the works and sums in the settlement agreements. The difficulty with the defendant's case, which I address further below, was twofold. Firstly, the inferences that he sought to draw from these facts were either not articulated or went beyond anything that could properly be inferred from these facts, particularly where there were other matters that pointed away from fraud and dishonesty. Secondly, the consequences in law of the inferences he sought to draw were a moveable feast or, in some instances, incoherent.
18. As I record in my judgment, what seems to have happened in this case is that following the voluntary disclosure to him of the "no angels" email, Mr Brady persuaded himself, possibly encouraged by others, that there had been some kind of fraud perpetrated

against him and/or that there was some kind of conspiracy between, at least, Mr Singh and FSM and possibly, he also came to think, a conspiracy that involved Maybury.

19. That “no angels” e-mail set the hare running and it was, it is fair to say, encouraged in its running by the admitted evidence, again voluntarily disclosed to Mr Brady, that on one occasion Mr Singh had indeed attempted to bribe Mr Sims of FSM in order to obtain one of the works packages. Mr Pierce had roundly rejected the offer of a bribe and, as I record in my judgment, the worst that could then be said of Mr Pierce was that he was prepared to continue to work with Mr Singh. But that itself was against a background of them having worked together, successfully it would seem, in the past.
20. What came out of those bare facts, the "no angels" email and that one attempt at a bribe, was then a wholesale and wide series of allegations that every single works package that was let to the claimant companies had been procured by a bribe either paid to or anticipated to be paid to FSM, and that that was or amounted to some form of what was pleaded as a “fraudulent conspiracy”. The bribery allegations were pleaded with little particularity and largely as a matter of inference. There was slim evidence to support the alleged widespread bribery and by the time trial was reached the allegations of widespread bribery had simply fallen away. But they did not fall away until the very start of the trial and, therefore, had to be dealt with during the course of the proceedings.
21. It was inherent in the allegations that had been made that FSM, and in particular Mr Pierce of FSM, had been party to the conspiracy throughout. At the start of trial, that contention also fell away. The defendant accepted that Mr Pierce had, until some point in October 2012, conducted himself with propriety. That was perhaps an unsurprising concession. Most notably, in September 2012 and as set out at paragraphs 21 to 23 of my judgment, FSM had advised Mr Brady strongly not to sign the so-called Instruction Letter which confirmed Nua’s entitlements to payment. That, anyone might have thought, was difficult to square with the alleged conspiracy. Mr Brady had, however, done so in his own mind and, as I set out at paragraph 127 of my judgment, he alleged that the letter had been prepared by Mr Singh and/or his then solicitors, Fenwick Elliott, apparently to create a false appearance of FSM’s fulfilling their duties to Mr Brady. Even when Mr Bebb of Fenwick Elliott provided a witness statement stating that his firm had not drafted the letter, that was not enough and the claimants were told that Mr Bebb would be required to give evidence at trial, although, in the end, that was not pursued. It is one example but it illustrates why the conduct of this litigation can readily be said to have been outside the norm.
22. One of the pleaded defences was that the claimant companies had dishonestly assisted FSM’s breach of fiduciary duty owed to the defendant. That allegation itself was barely particularised but, from the start of trial, it necessarily became a far more limited case that the claimant companies had dishonestly assisted a breach of fiduciary duty only from October 2012. Further, any allegation of breach of fiduciary duty against FSM and Mr Pierce seemed to be cut off at some point in December 2012 because, by January 2013, Mr Pierce had apparently, on Mr Brady’s case, changed sides again and started to support Mr Brady in his resistance to payment of the amounts of the Settlement Agreements and the statutory demands that were served on him.

23. As part of the case that, in respect of the Settlement Agreements, Mr Pierce acted in breach of his fiduciary duty, considerable weight was placed by the defendant on the pattern of e-mail correspondence. It became a central plank of the defendant's case in closing submissions that Mr Brady had not been kept informed about the Settlement Agreements, as addressed in my judgment from paragraph 224. It is worth observing that neither these primary facts nor the inferences that it was sought to draw from them had been pleaded and I again described this as a significant shift in Mr Brady's case at trial.
24. The key point, however, that founded the defendant's case that there was some type of fraud was that there was such a vast discrepancy between the true value of the work that had been carried out by the claimant companies and the amounts of the Settlement Agreements that it called for an explanation. It followed from that that the claimants had to address a complex case on valuation and adduce expert evidence to meet the case that was presented by the defendant as to the true value of the works and the inferences that the defendant could be drawn from the disparity between the true value and the Settlement Agreements. It is, in my view, important to have regard to the fact that this was not a common or garden dispute about valuation of works. The claimants always accepted that the Settlement Agreements were very generous to them but said that that was because they had properly played their commercial advantage. As set out in my judgment, a very large proportion of the value of works included in the Settlement Agreements represented sums that had previously been valued and certified by Mr Pierce. Up until the start of the trial, it might have been thought, although it was not expressly pleaded, that the defendant's case was that there had been over-valuation throughout but, with the abandonment of the allegation of earlier impropriety, that too fell away.
25. This was, therefore, in my view, clearly a case in which the defendant chose to litigate on a wide canvass and in the course of doing so he raised and pursued allegations of fraud and impropriety which were ultimately either abandoned or unsuccessful.
26. The defendant advanced this case on the basis of thin evidence which got no better, and, if anything, got worse, during the course of the proceedings and the trial. Although I recognise that the claimants' disclosure was, during the course of the proceedings, unsatisfactory and resulted in appropriate applications for specific disclosure, I have no doubt that one of the purposes of these applications was to obtain further evidence of wrongdoing. It was the sort of case that, in *IPC Media Ltd. v Highbury Leisure Publishing Ltd.* [2005] EWHC 283 (Ch), Laddie J described as Micawber-ish – a case in which allegations were made in the hope that something might turn up. But, as I consider further below, nothing of substance did turn up.
27. During the course of these lengthy proceedings, and until the start of trial, no unsustainable allegations were abandoned and, on the contrary, about two months before trial an application was made to amend to make further allegations of bribery against a third party. At trial an application was made to significantly amend the pleaded defence and the concessions referred to above were made. As recorded in my judgment, the case changed again in closing submissions.

28. Mr Bowling submits that all of those matters not only bring this case within the sort of range of cases where there might be an order for indemnity costs, but also militate in favour of such an order.

The defendant's case

29. Against that, Mr Speaight relies on a number of matters which he submits point the other way. I shall address them in the order that they were raised.
30. Mr Speaight submits, firstly, that although the defendant's allegations of what may loosely be called a dishonest conspiracy failed in the High Court, they had previously succeeded before an experienced adjudicator in the "Silk 2" adjudication. Factually that is right. The evidence before the adjudicator, Mr Cope, was sufficient to persuade him that that settlement had been achieved by Silk's dishonest assistance of FSM's breach of fiduciary duty. It was a decision made on the basis of the limited material before him and not the whole of the evidence at trial. The same adjudicator also found in favour of the claimant companies in other adjudications and, to that extent, his decisions can have given no encouragement to the defendant to persist in his wide-ranging allegations. In any case, as a matter of principle, as Mr Bowling submits, it cannot be the case that a stance taken in litigation is justified simply because an adjudicator has reached a supportive decision on a previous occasion. In general terms, I agree and it seems to me that to place reliance on the decision in adjudication in this way is to misunderstand the nature and effect of an adjudicator's decision.
31. The real point of this submission seemed to be to support the contention, made in the statement of his solicitor, Mr Mould, that Mr Brady held an honest belief that he had been duped and that there was the "fraudulent conspiracy" he alleged. Mr Speaight QC emphasised that I had found Mr Brady to be an honest witness. Mr Brady's honest belief in his allegations is no answer to the application. It might be material if it were necessary to establish some lack of good faith on the defendant's part or some conduct lacking moral probity but it is not. In any case, the way in which Mr Brady's belief arose is set out in my judgment and summarised above, and it seems to me that it was, even if an honest belief, one that arose out of an overreaction to the content of one or two e-mails and thereafter took on a life of its own.
32. Mr Speaight's second point was that the claimant companies also made grave allegations against the defendant, in particular that he had procured his own forged signature on the letter ratifying the Settlement Agreements, and that that was an allegation that failed. That, as a matter of fact, is also right. It was indeed an element, and a rather curious element, of the claimants' case that Mr Brady had sought to avoid the agreement of the settlement sums by having his own signature forged. That was an allegation that went to credibility. Whilst I accept that it was a serious allegation to make against Mr Brady, it went to a peripheral point in the sense that Mr Brady had then been asked to re-sign the relevant document. He did so and there was no issue about that and that that was a proper signature.
33. The forgery allegation, further, was not advanced without any supportive evidence. The claimants had the evidence of an expert witness. It would go a little too far to say that that evidence fell apart in the witness box but it was not, in the event, satisfactory evidence for the reasons set out in my judgment. It would, however, be wrong to say

that the claimants made the allegation without firm evidence, as far as they were aware, in support of that allegation.

34. Mr Speaight's third point was that there were some matters which reflected badly on the integrity of Mr Singh, Mr Pierce and Mr Sims, and which were either admitted or which I found to be well-founded. These were, in particular, and as foreshadowed, Mr Singh's admission that he had attempted to bribe FSM on one occasion to obtain the windows package and the payments from Maybury to FSM and from Nua to Mr Elkin. So far as the latter payments were concerned, I found the evidence to rebut the positive allegation that these were bribes unsatisfactory. I shall return to that point. Some reliance was also placed on the so-called wrapped glass incident in which the bank's surveyor was shown glass wrapped so that it could not be properly inspected and was told that it was architectural glass when it was not.
35. Fourthly, Mr Speaight submits that there was one part of the claimants' case that did not succeed, namely a claim for contractual compound interest at 30%.
36. Lastly, Mr Speaight relied on the claimants' conduct at many interlocutory stages which he said drew criticism or condemnation from the court. In support of that submission, the defendant relied on the table produced by Mr Mould which contains a list of such applications. The accuracy of the table is not in issue. The short point made on behalf of the defendant is that on 12 out of 14 applications to this court, the claimants were ordered to pay costs on those applications, and on two applications were ordered to pay costs on the indemnity basis.
37. It may seem rather odd to order indemnity costs in respect of costs of the action as a whole in circumstances where the court has marked its dissatisfaction with the conduct of the claimants by the making of orders against the claimants or where, as I said at the outset, there are findings that the claimant companies and/or Mr Singh have themselves behaved unethically.

The balancing exercise

38. As Mr Bowling submitted, and for the reasons I have explained above, the conduct of the defendant in the way in which the various allegations of fraud and dishonesty were advanced and maintained is, in my view, a very strong factor in favour of an indemnity costs order. To the extent necessary to make such a finding, it was, in my view, conduct that was unreasonable to a high degree.
39. On the other side of the balance, I do not regard the first two of Mr Speaight QC's points as having any or any significant weight. Nor do I consider the failure of the claim for compound interest of any significance in this case. The third and fifth or final points, however, do merit closer consideration. As far as the unethical conduct is concerned, whilst it carries some weight, I bear in mind, firstly, that I made no positive findings against Mr Singh, other than in respect of the admitted attempt at bribery, and none in respect of Mr Pierce. Secondly, and in any event, the far more serious allegations that were made against Mr Singh and FSM carry, to my mind, far greater weight and had far greater impact on the conduct of the litigation.
40. So far as the interlocutory applications are concerned, it seems to me that the table annexed to Mr Mould's statement does not really assist the defendant in the manner

which it is submitted. What it demonstrates is that no applications for specific disclosure were made until March 2018. That was, in the context of this action, quite shortly before trial and about 18 months after the early neutral evaluation had failed to promote a settlement. The fact that those applications were made at that stage does not support the argument that Mr Brady held an honest and reasonable belief throughout that there was something that could be expected to emerge from disclosure that justified the making of the very serious allegations which formed the core of his defence. The fact that the applications were made at that stage, on the contrary, suggests that, as the trial came closer, Mr Brady became intent on finding something belatedly to make good his case. There is nothing before me which would suggest that anything that emerged as a result of the disclosure applications made in March 2018, which I determined, and in July 2018, which Ms Buehrlen QC (sitting at a Deputy High Court Judge) determined, affected or supported the allegations that were being made by the defendant. The only matter that might have supported his case was the alleged bribe to Mr Elkin, which was the subject matter of an amendment to the Defence and was said to evidence the culture of corruption. That was the high point. In short, there was nothing more that emerged from that disclosure that bolstered Mr Brady's case as to the conspiracy between the claimant companies and FSM which lay at the heart of his defence.

41. Putting it starkly, the fact that those applications were made and were successful simply demonstrates that they were made and were successful, and that costs orders were made against the claimants in that respect. Where indemnity costs were ordered, they signify the view of the court on the conduct of the application and the underlying facts relating to disclosure. However, nothing emerged on this further disclosure that made good the defendant's case on the fraudulent conspiracy between the claimant companies and FSM. The defendant then made no concession and continued to advance his generalised and inferential case.
42. Further, on each occasion when those specific disclosure applications against claimants were made, there were corresponding applications by the claimants against the defendants which also succeeded. As I record in my judgment, the extent of the defendant's disclosure continued to be an issue, with justification, at trial. The claimants' criticisms of the defendant's disclosure and Mr Brady's lax and dismissive attitude to his disclosure obligations were, in my view, thoroughly justified. Thus in terms of conduct at the interlocutory stages, and particularly in respect of disclosure, the defendant's conduct also fell short.
43. Having carried out the balancing exercise, which it is common ground I should carry out, in my view the balance comes down very much in favour of the claimants. For these reasons, I order costs to be paid on the indemnity basis.