



Neutral Citation Number: [2020] EWHC 1302 (TCC)

Case No: HT-2018-000281

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

The Rolls Building
Fetter Lane, London, EC4A 1NL

Date: Friday 22nd May 2020

Before :

MR ROGER TER HAAR QC

Sitting as a Deputy High Court Judge

Between:

(1) MR CHRIS HART
(2) MRS KERRY HART

Claimants

- and -

(1) MR RICHARD LARGE
(2) MICHELMORES LLP
(3) HARRISON SUTTON PARTNERSHIP

Defendant

Helena White (instructed by **Wright Hassell LLP**) for the **Claimants**
Simon Wilton (instructed by **Kennedys LLP**) for the **Defendants**

Hearing dates: 7 May 2020

APPROVED JUDGMENT

Covid-19 Protocol: This judgment will handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Friday 22nd May 2020.

Mr Roger ter Haar QC :

1. In this action, following trial I circulated a judgment dealing with the substantive issues in the action. That judgment was to be handed down on the 24th April 2020 but following a request for some aspects to be changed to allow for a degree of anonymity I deferred the hand down of the judgment.
2. On the 7th May 2020 I heard argument about the issues of anonymity and other consequential orders. This judgment, which in the event will be handed down at the same time as the principal judgment, deals with the principles upon which I have determined the issue of anonymity as well as the other consequential issues.
3. The following issues are the subject of this judgment:
 - (1) Anonymity;
 - (2) Interest;
 - (3) Costs of the action;
 - (4) Costs budgeting;
 - (5) Costs of the hearing on 7 May 2020;
 - (6) Interim payment as to costs;
 - (7) Permission to appeal;
 - (8) Stay pending appeal.

Anonymity

4. As set out in the principal judgment, this action now consists of a claim by the Claimants, Mr and Mrs Hart, against the First Defendant, a surveyor, for damages in respect of a survey carried out by the First Defendant of what is now the Claimants' home.
5. In normal times, a judgment would be handed down in open court. Members of the press and, if interested, members of the public could have requested copies of the judgment. Some, but not all, judgments are then placed on the BAILLII website so that they are available to the public. Substantive TCC judgments, which have been handed down, are to be found on BAILLII.
6. During the course of the current public health emergency judgments are being handed down pursuant to the Covid-19 protocol which requires that all handed down judgments are to be placed upon BAILLII.
7. The Claimants' concern is that this procedure enhances the risk of third parties carrying out internet searches, finding out personal details about parties to proceedings, and using that information for unintended purposes.
8. My power to anonymise the proceedings is governed by CPR r. 39.2 which provides:

“(4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.”

9. This provision reflects the importance of open justice. Any derogation from the principle of open justice has to be strictly justified in accordance with the above provision.
10. In my judgment, whilst the concerns of the Harts are understandable, there is not sufficient justification for departure from the normal identification of the full names of parties before the Court.
11. To that extent the Claimants' request is refused.
12. However, by contrast the request to omit the address of the property at the heart of the dispute before the Court does not involve anonymity and in no way offends the principle of open justice. Accordingly, the judgment distributed in draft will be amended as requested in this respect.

Interest

13. The following issues arise:
 - (1) What is the sum upon which interest is payable?
 - (2) What rate should be taken?
 - (3) What period should be taken?
14. In my principal judgment I held that the Claimants are entitled to damages of £750,000 less a credit for £376,000 in respect of monies received from the other two Defendants, resulting in net damages of £374,000.
15. The Claimants' position is that I should award interest on the full sum of £750,000 until the date of the settlement with the other Defendants.

16. The First Defendant says that I have no power to do so, and that interest should be calculated on the sum of £374,000 throughout.

17. It is agreed that my power to award interest is contained in Section 35A(1) of the Senior Courts Act 1981 which provides:

“in proceedings (whenever instituted) before the [Court] for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and

“(a) in the case of any sum paid before judgment, the date of payment; and

“(b) in the case of the sum for which judgment is given, the date of judgment.”

18. This provision was considered by the Court of Appeal in *I.M. Properties Plc v Cape & Dalgleish* [1999] Q.B. 297. In that case the defendant accountants carried out negligent audits for the plaintiffs between 1988 and 1992 as a result of which, in breach of duty, they failed to protect the plaintiffs from the fraudulent misappropriation of funds by the plaintiffs’ chief executive. Before commencing High Court proceedings against the defendants for consequential loss, the plaintiffs recovered from the chief executive shares to the value of £430,000. At the trial of the action the defendants admitted liability for negligence. The judge assessed the plaintiffs’ initial loss at £704,568 and, after giving credit for the £430,000 recovered before action, he gave judgment for the plaintiffs for £274,568. He awarded interest under section 35A of £249,876, which included interest on the £430,000 until the date of its recovery.

19. The Court of Appeal allowed an appeal against the award of interest. At page 306 Waller L.J. said (emphasis added):

“In the result in my view the plaintiffs have the difficulty that on any view they could not contend that the proceedings in the instant case had been commenced prior to what they would contend constituted a part payment. In addition however, as it seems to me, on the proper construction of the subsection their difficulties do not stop there. Even if they could argue that the subsection did apply to proceedings for damages where payments had been made prior to commencement of the proceedings, there would still remain certain questions. (1) The first question would be whether following a recovery from Fitzgerald, it could legitimately be argued that the proceedings thereafter commenced were proceedings for the recovery of those sums recovered from Fitzgerald. (2) Furthermore the question would arise in any event whether the recovery from Fitzgerald constituted a “payment” for the purposes of the subsection.

“As to question (1), it seems to me that the fact that on this construction there might be a distinction between those cases where it was undisputed that a payment or recovery had reduced the damages (leading to the view that the proceedings could not fairly be said to be for the recovery of those damages); and those cases where the question of the recovery might still be in issue, simply serves to demonstrate that the construction of section 35A(1) already indicated (i.e. that the subsection only applies to payments *during* proceedings) is to be preferred.

“As to question (2), it seems to me that recovery from a third party by way of mitigation, is not what the subsection contemplated. *What is contemplated is payment by a defendant.* Thus in my view, even in the extreme case of recovery only being obtained from a third party some days prior to a hearing date, then if that recovery reduces the sum for which judgment can be obtained, I do not think that the court would have any power to award interest up to the date of recovery. I should emphasise that there may well be cases where two tortfeasors are sued and a plaintiff by recovering against one will not be forced to accept anything but full judgment from the other with an obligation not to execute for the full amount. But where recovery does reduce the sum for which a plaintiff can obtain judgment, then in my view the court would not have power to award interest up to the date of that recovery.”

20. Waller L.J. also commented that:

“The facts of this appeal, and the fact that in the extreme case just referred to the court does not have the power to award interest, points to section 35A causing an injustice in some cases.”

21. Robert Walker L.J. agreed with Waller L.J.

22. At page 307, Hobhouse L.J. said:

“The plaintiffs’ claim in the action was for damages for breach of contract and/or negligence. Such a claim has two characteristics. First, the only damages claimed can be the damages which the plaintiff has in fact suffered. In so far as he has been able to avoid some of his losses, as where he has been able to mitigate his loss, he can only sue for and obtain judgment for his unavowed loss. Mitigation or failure to mitigate gives the defendant a defence to the claim. The writ and the statement of claim cannot properly include any claim in respect of an avoided loss.”

23. At page 308 Hobhouse L.J. continued (emphasis added):

“The outcome was that the only claim which they made and which they were entitled to make in the action was for their unrecovered loss. The judge gave them judgment for that sum. The question then arose of the award of interest under section 35A of the Supreme Court Act 1981, as inserted. *It is to be observed that this case does not involve any question arising from a payment made at any stage by the defendants to the plaintiffs. It might well be thought that it is that type of payment to which the drafting of section 35A was directed. But it is not necessary to express any view whether the references to payment in that section are to be confined to payments made by the relevant opposite party against whom judgment has been obtained.....*”

24. In that passage from Hobhouse L.J.’s judgment he keeps open the exact situation which faces the court in the instant case – whether the section is confined to cases where payments are made by the relevant opposite party against whom judgment has been obtained.

25. It is clear from the judgments of all the members of the Court that if the £376,000 paid in this case had been paid by the solicitors and architects who

were in fact made the second and third defendants in this case in a situation where they had not been made defendants to the proceedings, the payment would have been treated as a payment by a third party reducing the amount of damages, with the consequence that interest would have been calculated upon the net figure.

26. Is the situation different because the two parties were made defendants in this action? There would appear to be no logic in making that distinction. As I read the judgment of Waller L.J. when he refers in his discussion of “question (2)” to “a payment by a defendant” the logic of the discussion is that he is referring to the party who is “the relevant opposite Party”, to use Hobhouse L.J.’s expression.
27. Both the substantive judgments in the Court of Appeal focus upon the fact that the payment by a party who is not the “relevant opposite party” reduces the amount of damages payable by the relevant opposite party: the loss is to the extent of that payment an avoided loss.
28. In this case the amount of damages which I have awarded was calculated by agreement between the parties after giving credit for the sum received from the other defendants, which appeared to me to reflect the fact that to the extent of that payment, the Claimants’ loss had been avoided.
29. For these reasons, even if I am not strictly bound by the decision of the Court of Appeal in *IM Properties*, the logic of that case indicates that when calculating interest I should do so taking the figure upon which interest is to be calculated as being the judgment sum of £374,000.

30. I turn now to consider the rate at which interest is to be calculated.
31. The Claimants contend for 4.5%.
32. The Defendant contends for 2.5%.
33. In *Attrill v Dresdener Kleinwort* [2012] EWHC 1468 (QB) Owen J. set out the broad principles which a court should follow in selecting the appropriate rate of interest:

“2. The relevant principles are not contentious. The rate of interest is at the discretion of the court. Secondly the purpose of an award of interest is fairly to compensate the recipient for being deprived of money that he should have received. Thirdly a ‘broad brush’ approach is taken to determine what rate of interest is just and appropriate. As Andrew Smith J put it in *Fiona Trust and Holding Corporation and Others v Yuri Privalov and Others* [2011] EWHC 664 (Com) at para. 16:

“... it would neither be practical nor proportionate (even in a case involving as large sums as these) to attempt a minute assessment of what will precisely compensate the recipient. In particular, the courts do not have regard to the rate at which a particular recipient of compensation might have borrowed funds. This policy is adopted in order to control the extent of the enquiry to ascertain an appropriate rate: see *Banque Keyser* ... the court will, however, consider the general characteristics of the recipient in order to decide whether to assess interest at a rate that is higher or lower than is conventional. So, for example, in *Jaura v Ahmed* [2002] EWCA Civ 2010, Rix LJ awarded interest at the base rate plus 3% to reflect that “small businessmen” had been kept out of their money and in recognition of the “real cost of borrowing incurred by such a class of businessmen”. Thus, the court will examine what has been called “a question of categorisation of the plaintiff in an objective sense” (see the *Banque* case *Allman* case) ... recognise relevant characteristics of the party who was awarded interest and reflect them when determining the fair and appropriate rate. ...”

34. I was also referred to the decision of the Court of Appeal in *Carrasco v Johnson* [2018] EWCA Civ 87 at paragraph [17]. Mr Wilton summarises the principles there set out as follows:

“a. interest is awarded to compensate claimants for being kept [out] of money which ought to have been paid to them, rather than as compensation for damage done or to deprive defendants of profit they might have made from the use of the money;

“b. this is a question to be approached broadly and the court will consider the position of persons with the claimants’ general attributes, but not the claimants’ particular attributes or any special position in which they may have been;

“c. for commercial claimants the general presumption will be that they would have borrowed less and so the court will have regard to the rate at which persons with the general attributes of the claimants could have borrowed, which is likely to be a percentage over base rate;

“d. for personal injury claimants the general presumption will be that the appropriate rate will be the investment rate;

“e. many claimants will not fall into a category of those who would have borrowed or those who would have put money on deposit and a fair rate for them may often fall somewhere between the two rates.”

35. I accept that as an accurate summary of the principles set out by the Court of Appeal.

36. Ms. White says that as this is a case which concerns the home of two private individuals and their family it would be just and appropriate to depart from the commercially conventional rate of between 2 and 3%. The Harts seek 4.5% which they say reflects the fact that their money has been tied up in a property that is worth a fraction of the price they paid for it. They have had to use their savings in order to fund the litigation, which is money they would have been able to keep in their savings and pensions but for Mr. Large’s negligence.

They submit that the need to utilise that money for the purpose of this litigation was directly caused by his negligence.

37. Ms White also submits that it is the Harts' intention to now carry out remedial works at the Property to put the Property back into the shape they expected it to be, when they purchased it. She submits that the application of interest is a method by which the court can ensure claimants receive proper compensation given the time that it can reasonably take for a matter to come to trial.
38. For Mr Large, Mr. Wilton relies upon the usual rates of interest awarded by this Court and also points out that interest rates on bank accounts have been at very low rates throughout the relevant period (since 2011).
39. It seems to me that the purpose for which the Harts intend to use the proceeds of these proceedings is not in itself relevant to the selection of the appropriate rate of interest.
40. However, given that the damages have been assessed on the basis of the cost of remedial works at 2011 prices, it seems to me that I can take into account that the award of interest will in part allow for the fact that 2011 prices were considerably lower than the current prices – the difference is a little over 30% over the period. (See the figures at paragraph 257 of the principal judgment).
41. If interest does not reflect this reality, then the Harts will receive in 2020 damages calculated at 2011 rates, which would obviously be unjust unless some allowance for that difference is made in some other way.
42. In my judgment I can also take into account that because of the impact of the *IM Properties* case as set out above, the Harts will only be receiving interest on a sum considerably less than the full amount of their loss for most of the relevant period.
43. For these reasons, it seems to me that a fair rate of interest is 4.5%.

44. Finally, there is an argument as to the period over which interest should be awarded.
45. In that regard the general principles which I should apply are not in dispute. In *Claymore Services Ltd v Nautilus Properties Ltd* [2007] EWHC 805 (TCC) Jackson J. at [55] said that the authorities in relation to delay showed that:
- (1) Where a claimant has delayed unreasonably in commencing or prosecuting proceedings, the court may exercise its discretion either to disallow interest or reduce the rate of interest;
 - (2) The Court must take a realistic view of delay as litigation is an unwelcome distraction and delay is unreasonable only when, after allowance for the circumstances, the claimant neglected to pursue the claim for a significant period;
 - (3) If a disallowance or reduction is made, the court should bear in mind that the defendant has had the use of the money during the delay.
46. It is Mr. Large’s submission that there was a period of about three years before proceedings were commenced which should be reflected in a reduction in the amount of interest payable. In paragraph 17 of his skeleton argument, Mr Wilton put the point as follows:

“It is submitted that the court should deduct 3 years’ worth of interest to reflect the claimants’ unreasonable delay in bringing forward their claim, the fact no opportunity was taken to set out the case in the pre-action period as required by the Professional Negligence (Pre-Action) Protocol (which should have been done via a Letter of Claim sent within 3 months of 16 April 2014), the further passage of time before proceedings were issued in late 2017, and the yet further delay before the claimants’ liability case was finally properly particularised. It is submitted that that would reflect a reasonable balance between the competing considerations (1) that the purpose of

an award of interest is to compensate a claimant for being kept out of his damages; and, (2) that a claimant should get on with bringing his claim, and cannot expect a defendant to compensate him for the use value of compensation ultimately awarded when he has unreasonably delayed in doing so.”

47. I accept that there was some delay on the part of the Harts in commencing proceedings, and that there was not compliance with the Pre-Action Protocol. However, in my judgment the Harts found themselves in a difficult situation in no way of their making as they dealt with the numerous problems in the house. Moreover, it seems to me unlikely that compliance with the Protocol would have made any significant difference to the conduct of this case.
48. In all the circumstances of this case it would in my view not be just to reduce the period over which interest should be calculated.
49. The consequence is that there will be interest on £374,000 at a simple interest rate of 4.5% from the 23rd November 2011 to the date when the principal judgment is handed down on 22nd May 2020.

Costs of the Action

50. There are two issues which I have to resolve:
- (1) Should part of the costs be assessed on an indemnity basis?
- (2) Should the Claimants receive 100% of their costs, on whichever basis the costs are to be assessed.
51. At paragraphs 39 and 40 of her submissions, Ms White submits:

“39. The Harts’ contend that they should be entitled to an order that the First Defendant pay their costs of the proceedings on the standard basis, save that costs should be on the indemnity

basis from the date of the parties' mediation that took place on 27 November 2019, a date by which the Harts case had been made palpably clear and settlement should have been possible. It is submitted that D1 has made no adequate attempts to settle (see discussion of the offers made below), whereas the Harts made a very sensible Part 36 Offer, albeit one which was withdrawn just before trial, on 14 January 2020, in the sum of £324,000. If it had not been withdrawn, it would have been beaten (thus entitling the Harts to all the fruits of CPR r35.17).

“40. It is accepted that the Harts cannot avail themselves of CPR r 35.17. However, the court, in its broad discretion, is entitled to take into account the Harts' own offer, as well as the D1's inadequate offers, when deciding what orders to make in respect of costs.”

52. Ms White summarises the offers which Mr Large made to settle as follows:

“27 December 2019 – D1 participated in an “All Ds” Part 36 Offer in the sum of £439,200, inclusive of VAT and interest This was essentially an update to the offer that had been made by D2/3 on 24 December 2019, in the sum of £376,000. Therefore, the element particularly referable to D1 was £63,200;”

30 December 2019 – D1 participated in an “All Ds” Calderbank Offer in the sum of £649,200, inclusive of damages, interest, costs, disbursement and VAT;

13 January 2020 – D1 made a Calderbank Offer in the sum of £175,000, inclusive of damages, interest, costs, disbursement and VAT;

13 January 2020 – D1 made a Part 36 Offer in the sum of £79,200 inclusive of VAT and interest;

17 January 2020 – D1 made a Calderbank Offer in the sum of £250,000, inclusive of damages, interest, costs, disbursements and VAT ... – having stated in open correspondence, for the first time, that this was the limit of D1's insured liability, in any event”

53. This sequence of offers, although inadequate to provide Mr Large with any costs protection in the face of my principal judgment, appears to me to evidence reasonable attempts to find a settlement.
54. In the circumstances I see no grounds for departing from the usual order that costs should be assessed on the standard basis throughout.
55. Whilst Mr Wilton on behalf of Mr Large accepts that the claimants are the winners and that the starting point is that they are entitled to their costs as per CPR 44.2(2)(a), he submits that the award should be limited to a proportion of their costs, which he puts at 75%.
56. The principal points which he makes are set out in paragraphs 24 to 26 of his skeleton argument:

“24. The delay in bringing the proceedings, the failure to follow the Protocol and the delay within the proceedings in producing a proper Scott Schedule are detailed above. As to issues upon which the claimants lost, the court rejected their case that Mr Large should have recommended a building survey, Mr Easton having made an unheralded and apparently inexplicable concession that Mr Large could properly have opted for the HomeBuyer survey. The court also rejected the case that Mr Large was in breach of duty in failing to identify, or draw attention to the need for investigation of, or protection against, most of the very long list of itemised defects in the Scott Schedule. Paragraphs 187-199 of the draft judgment indicate findings of negligence in respect of: failing to identify or report sufficiently on the binding front door, the lack of falls in the window cills, the slight tile overhang, the inappropriate detailing to the lead overlaps to the bay roof, and the poor workmanship to the terrace (plus possibly the flues and ventilation, the plasterboard and insufficient step in the garage - all of which were, however, described as “*relatively trivial*” in paragraph 187 so it looks as if the court did not regard them as sufficiently serious to require reporting upon). The court certainly rejected any reporting failure in relation to the fire protection to steel columns, the approach steps, surface rust, structural steelwork, and the lack of a party wall agreement. Furthermore, at the start of day 4, mid-way through the cross-

examination of Mr Easton, and without any explanation, the claimants abandoned their case that the defendant negligently failed to report: the steel beams crossing the cavity, incorrect plywood in the upstairs bathroom, sanitaryware and plumbing connections being concealed, corrosion of balustrade post base fixing plates, wrong steel in the balustrade posts and fixings, corroding steelwork to garden door handles, roof slates fixed with galvanised not copper nails, dormer slate roof defectively constructed, and a defective electrical installation.

“26. In the result, and contrary to what one might have supposed on reading the particulars of claim and Scott Schedule, this was not in substance a case about a failure to recommend a building survey or a case about failing to identify defects which were there to be seen or suspected, and instead the route to the substantial liability the court imposed lay via the court’s findings that (1) Mr Large should have drawn attention to the fact that *he could not see* evidence of damp-proofing measures and should have said that further investigations were advisable for that reason and because the construction was new and there had not yet been a chance for any serious defects to show themselves, and (2) Mr Large did not give a sufficiently emphatic warning about the need for an architect’s certificate.

“27. A substantial amount of time and money was therefore spent addressing the issues of whether a building survey was necessary and whether individual defects were observable by Mr Large when that case was either abandoned, or failed at trial. That involved both lawyer time (when preparing the pleadings including the detailed response to the Scott Schedule, and statements, liaising with experts, and in preparation for trial) and expert time. Indeed, this case would have been simpler, less costly, and easier to manage all round, if the claimants had founded their case just on those relatively few defects where there was good reason to allege they were observable at the time (most obviously by reason of the contemporaneous photos), on the allegation as to the kind of warning which should have been given about not being able to verify the presence of damp-proofing measures, and as to the need for a more emphatic warning about the need for an architect’s certificate.”

57. In my judgment, there is substance in these submissions, and I accept that these matters should be reflected in my award of costs. I further accept, applying the guidance in the White Book, and particularly the notes at section

44.2.8, that the way to reflect these matters is to make a proportionate reduction in the amount of costs awarded.

58. As the White Book makes clear, any reduction must be on a broad brush basis. There was a substantial amount of costs including substantial amounts of expert involvement attributable to the issues upon which, as Mr. Wilton has identified, the Claimants did not succeed.
59. In my judgment the appropriate reduction is 15%. Accordingly the Claimants will recover 85% of their costs to be assessed on the standard basis.

Cost Budgeting

60. On behalf of the Harts, Ms White wished to change two aspects of the filed and approved costs budgets.
61. As the changes would potentially affect the Second and Third Defendants, I declined to interfere, but make it clear that the matters raised can be raised in front of the Costs Judge, and I have reached no decisions of any kind as to the merits of the proposed changes.

Costs of the hearing before me on the 7th May 2020.

62. Ms White sought a specific order in respect of the costs incurred by the Claimants in respect of the hearing before me on the 7th May 2020 to consider the matters dealt with in this judgment.
63. In my view it is appropriate that these should be assessed by the Costs Judge at the same time as the other costs in this action, although the costs appeared

to me to be broadly reasonable. I have allowed for those costs in my decision as to an interim payment below.

Interim payment as to costs

64. The Claimants seek an interim payment on account of costs in the sum of £60,000.
65. Mr Large accepts that an interim payment should be made, but contends that it should be limited to £40,000.
66. I have no statement of the costs of the action as a whole, other than the original costs budgets. and have to take into account that a significant amount of costs will be shared between all three defendants up to the date when the defendants' offer was accepted. On the other hand I have available the cost budget information which enables me to form a view of the level of costs likely to have been incurred by the Claimants.
67. As I have said, in assessing the amount of costs to be paid on an interim basis I take into account the costs of the 7th May hearing.
68. In the costs budget, the amount approved for trial was a little over £150,000.
69. In my view the amount of £60,000 plus a further £7,500 for the 7th May hearing, is a reasonable payment on account.

Permission to appeal

70. There is an application before me for permission to appeal.
71. Mr Wilton put before me draft Grounds of Appeal.

72. In considering those Grounds of Appeal I have to keep in mind the provisions of CPR rule 52.6 and in particular the requirement that I should only grant permission to appeal if I consider that the appeal would have a reasonable prospect of success.
73. Whichever way I decide this issue it has the potential to be a disaster for one or other or both of the prospective parties to the appeal.
74. For the Harts it would extend the legal process for a year or more with all the attendant uncertainty.
75. For Mr Large, he is uninsured for much of the liability which my judgment has placed upon him. The prospect of an appeal for him also extends the period of uncertainty.
76. All this in a context where because of the settlement with the other two defendants there has as yet been no assessment of the apportionment of liability between defendants. This apportionment may or may not take place in a future arbitration. The outcome of any such arbitration is obviously uncertain but it seems to me on the limited information before me there is at least a significant prospect that Mr. Large would be found in such an arbitration to have by a significant margin the least responsibility of all the three professionals. However, I emphasise that this expression of opinion is given without the input of either of the other defendants.
77. In those circumstances, I am very conscious that grant of permission to appeal may make a bad situation worse for both the Harts and Mr. Large.

78. Nevertheless, my task is to decide whether the grounds in CPR rule 52.6 are satisfied.
79. There are three grounds of appeal placed before me in the draft Grounds of Appeal drafted by Mr. Wilton.
80. Of those three grounds of appeal it seems to me that the first two turn upon the factual and expert evidence placed before me. I do not regard those as being arguable grounds of appeal.
81. However, the third ground of appeal seems to me to raise arguable points as to the correct valuation of damages on the findings which I made.
82. Accordingly, I grant permission on ground “c” on the Grounds of Appeal placed before me, but not on the other grounds.

Stay

83. The application for a stay was made only shortly before the hearing before me on the 7th May.
84. In my view, it should be the subject of a formal application to which the Claimants can respond.
85. Such application should update the court (a) as to whether Mr Large will be supported in his appeal by the Royal Institute of Chartered Surveyors or his insurers; and (b) as to the position of any proceedings as between Mr Large and the other Defendants.

86. In the meantime, there will be a stay limited in time for the evidence in the previous paragraph to be gathered.