



Neutral Citation Number: [2022] EWHC 2618 (KB)

Case No: QB-2020-001005

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/10/2022

Before :

SENIOR MASTER FONTAINE

Between :

**SID-ALI ATMANI
& OTHERS**

Claimants

- and -

**ROYAL BOROUGH OF KENSINGTON &
CHELSEA (1)
ROYAL BOROUGH OF KENSINGTON &
CHELSEA TENANT MANAGEMENT
ORGANISATION LIMITED (2)**

Defendants

Susan Rodway KC and Shaman Kapoor (instructed by **Bishop Lloyd & Jackson**) for the
Claimants

Leigh-Ann Mulcahy KC, Meghann McTague and Lucinda Spearman (instructed by **DWF
Law**) for the Defendants

Hearing dates: Without a hearing

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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SENIOR MASTER FONTAINE

Senior Master Fontaine :

1. This judgment concerns the costs of the BLJ Claimants' application dated 5 April 2022 and is ancillary to the judgment relating to issues heard at the case management conference (CMC) on 27 April 2022 at [2022] EWHC 2006 (QB) ("the main judgment"). The same abbreviations and pagination references are used in this judgment as in the main judgment.
2. Paragraphs 7-30 of the main judgment deal with BLJ's application. Both Claimants and Defendants have submitted written submissions in relation to the appropriate costs order for that application, and this judgment is dealt with without a hearing under CPR 23.8, pursuant to the order of 27 July 2022.
3. The difference between the parties in respect of the appropriate order is that the BLJ Claimants/Applicants seek an order for costs in the case, and RBKC/the Respondents submit that an appropriate order would be for Defendants' costs in the case.
4. The determinations made on the various orders sought in the BLJ application was as follows:
 - i) The application to lift the stay was unsuccessful;
 - ii) The application for RBKC to enter a defence was unsuccessful;
 - iii) The application to enter judgment in 9 claims succeeded, by consent;
 - iv) The application to enter judgment in a further 44 claims was unsuccessful;
 - v) The application for an order for a payment on account of liability costs was unsuccessful, but permission was given to restore on the expiry of the stay.
5. Thus the successful party in broad terms was RBKC, as although the Claimants succeeded in their application for judgment in nine claims, and had to make an application in order to obtain such an order, that order was unopposed and did not require significant court time. The order of 28 July 2022 makes provision for the liability costs of the BLJ Claimants in the claims where judgment has been entered.
6. The Court has a wide discretion as to what costs should be payable and when: CPR 44.2(1). The general rule is that the unsuccessful party pays the costs of the successful party, but the court may make a different order: CPR 44.2(2).
7. In deciding what order to make about costs, the Court will have regard to all of the circumstances, including (but not limited to) the conduct of the parties: CPR 44.2(4). The conduct of the parties includes (but is not limited to) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue, and the manner in which a party has pursued or defended its case or a particular allegation or issue.
8. The usual order at a case management hearing is for costs in the case, and that is sometimes, but not always, the case for applications heard at a CMC. The case managing judge will make a decision as to the costs of any application appropriate to the particular circumstances.

9. I consider that it is appropriate in the consideration of all the circumstances to consider each order sought in the application separately, and decide what would be the most appropriate costs order for each, then step back and make an overall order in respect of the application, recognising that it would be an unnecessarily complex and disproportionate exercise to make an issue based order.

Application to lift the stay

10. A considerable time was incurred at the hearing in dealing with the BLJ Claimants application to lift the stay. The BLJ Claimants were entitled to raise concerns for their clients in respect of what was sought, namely a lengthy stay of 12 months, which those advising the BLJ Claimants considered was not in their interests, and to bring those concerns and the reasons for their opposition to such an order to the court, but all parties before this court must act with appropriate consideration of the overriding objective, including, in particular, proportionality. All parties are at risk of adverse costs if they make applications which are unsuccessful.
11. It is correct that the court made further inquiries of the Defendants, and the Bindmans group of Claimants, as to the progress of the ADR process, as the ER Claimants, as well as the BLJ Claimants, had been critical of the lack of progress in that process since the last CMC some 9 months previously. That was necessary so that the court could take an informed view with regard to the application for a further lengthy stay. There were also other more minor factors for consideration affecting the Defendants' application for a stay, such as the ER Claimants' applications for a 'break clause' with a further CMC after 6 months, for the appointment of a lead defendant and for permission to investigate liability during the course of the stay, but the BLJ Claimants' application was on a more substantive basis, namely complete opposition to an extension of the stay for the claims within the BLJ Claimants group, and was the main issue for consideration at the CMC.
12. At the hearing in April all other parties, both Claimants and Defendants, were either in favour of a continuation of the stay (the majority) with a few who were neutral/did not oppose a stay, and the ER Claimants who sought to impose conditions on the stay. Five groups of represented Claimants and 17 represented Defendants/Third Parties were at the hearing, and some 33 Counsel, plus solicitors for those parties. The costs of the hearing must inevitably have been extremely high. That was a consideration that the BLJ Claimants should have had in mind when considering the costs risk of their application to oppose a further stay. It was incumbent on all the parties to take into account proportionality and try and compromise issues, for the benefit of all of the parties with multiple different interests.
13. It was in my view overwhelming likely that in the particular circumstances of this litigation, the court could not allow a minority of claims, all with similar liability issues to other Claimants, to proceed separately, and that to do so would not only be disproportionate of costs and resources but would risk inconsistent decisions on liability issues. As I stated in the main judgment, I have a huge amount of sympathy with the BLJ Claimants in their very difficult and distressing circumstances, and the length of time taken by both the Inquiry and this litigation, but those circumstances are no different from those affecting all the Grenfell victims.

14. The BLJ Claimants have also always had the opportunity to join the ADR process which all other parties have agreed to, or to enter into negotiations with RBKC for a separate ADR process.
15. In those circumstances RBKC would, in my judgment, be entitled to a proportion of the costs incurred, namely those that were not concerned with the case management decision as to whether it was appropriate to continue the stay for the purposes of continuing with the ADR process, i.e. the issues raised by the BLJ Claimants in the submissions summarised at paragraphs 44-48 of the main judgment. I consider that an appropriate order would be that the BLJ Claimants would be responsible for 50% of the Defendants' costs, taking into account the additional issues raised by the BLJ Claimants in their skeleton argument and in oral submissions that went beyond the need for more information about progress in the ADR process.

Application for RBKC to enter a defence

16. No, or very little, additional time was taken up with this, as the decision inevitably followed the decision on RBKC's application for a stay and the BLJ application to lift the stay.

The application for judgment where RBKC had stated they would not oppose this.

17. In the nine cases where judgment was entered the application did not take up significant time at the hearing, as it was unopposed. However, that concession was at a late stage; the BLJ Claimants skeleton argument states it was one working day before the hearing. The BLJ Claimants would be entitled to their costs of this application.

The application for judgment in the remaining 44 claims

18. This application failed for the reasons set out at paragraphs 16 – 19 of the main judgment. The general order would apply and RBKC would be entitled to their costs of this application.

The application for a payment on account of liability costs

19. BLJ are correct that a Claimant who has won and obtained an order for costs (as is the case for the nine claims where judgment has been entered) is entitled to a payment on account of costs, unless there is good reason not to do so (see CPR 44.2 (8) and *Mars UK Ltd v Teknowledge Ltd (1999) EWHC 226 (Pat)* per Jacob J.). There was good reason not to do so in this case, for the reasons set out at paragraphs 28–30 of the main judgment, in particular because the BLJ Claimants had not provided the court or the Defendants with the information required to make such an order. It was explained by the BLJ Claimants that the concessions in respect of the judgments were not given until the working day before the hearing, so that there was insufficient time for BLJ to provide what would be a complex statement of costs. In my judgment if that was the case there was little point in proceeding with the application as it must have always been apparent that the court could not grant the application without such information. Permission has been given to restore the application on the expiry of the stay, but RBKC would be entitled to the limited costs of dealing with the application in its skeleton argument and at the hearing.

Effect of QOCS

20. A separate issue has arisen in respect of costs, namely whether CPR 44.13 (1) and 44.14 (1) preclude the court from making an order in the terms proposed by the Defendants', as submitted by the BLJ. In my view the rules do not preclude the court from making such an order. Claimants subject to the QOCS regime are not protected from interlocutory costs orders, otherwise such Claimants would be free to make speculative or unmeritorious applications without fear of costs consequences. As RBKC correctly submit, CPR 44.14 makes it clear that the QOCS regime concerns enforcement of costs orders, which is not a relevant consideration in respect of this order.

Conclusion

21. Taking all those considerations into account, the particular circumstances of this litigation and the manner in which the CMC hearing proceeded, I consider that the appropriate order is that RBKC are liable for the costs of the BLJ Claimants' application for entry of judgments in the nine claims, to be the subject of detailed assessment if not agreed, or further order, and the remaining costs of the BLJ Claimants' application dated 5 April 2022 to be Defendants' costs in the case.