

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 24 November 2023

BEFORE:

MRS JUSTICE JOANNA SMITH

BETWEEN:

(1) TRANSOMAS LIMITED
(2) TRANSOMAS INVESTMENTS LIMITED

Claimants

-and-

(1) KHERI TRADING LIMITED
(2) TARNJIT SINGH GILL

Defendants

The Claimants were unrepresented and did not appear

MR MARK ANDERSON KC, MS GABRIELLA McNICHOLAS and MR JASON MITCHELL (Instructed by Macfarlanes LLP, 20 Cursitor Street, London EC4A 1LT) appeared on behalf of the Defendants.

JUDGMENT
(As approved)

Daily Transcript by John Larking Verbatim Reporters
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No of folios: 41
No of words: 2966

(Friday, 24 November 2023)

MRS JUSTICE JOANNA SMITH:

1. Following my dismissal of the Hotel Proceedings on 13 November 2023, I now need to determine the question of costs. Where I have dismissed these proceedings on the first day of the trial there is no question but that the Defendants should be entitled to their costs. The only question is whether they should have them on an indemnity basis, as the Defendants contend.
2. The Defendants' application for indemnity costs is essentially made on two grounds: first, that it is well established that indemnity costs are ordinarily appropriate where claimants abandon claims of fraud without adequate explanation. See *PJSC Aeroflot Russian Airlines v Leeds* [2018] EWHC 1735 (Ch), [2018] 4 Costs LR 775 at [48]-[53], per Rose J, as she then was; second, by reference to the further conduct of the Claimants and the particular circumstances of this case, which it is said “[take] it out of the norm” in the sense that such conduct and such circumstances take this case beyond the ordinary and reasonable conduct of proceedings. See *Excelsior Commercial and Industrial Holdings Ltd* [2002] EWCA Civ 879, per Lord Woolf LCJ at [32] and Waller LJ at [39].
3. The court has a wide discretion to determine whether an order for indemnity costs is appropriate in the circumstances of the case. Having regard to the grounds identified by the Defendants and the authorities to which my attention has been drawn, I am satisfied that such an order should be made in this case. My reasons are as follows.
4. The Claimants' claim included an allegation that Mitch Gill made a fraudulent misrepresentation to his father, effectively with a view to inducing him to sell the hotel owned by his business at a considerable undervalue. This allegation was made from the outset of the proceedings and maintained all the way to the first day of the trial. Whatever its merits, Mitch Gill had no option other than to take this allegation seriously and to defend it at, no doubt, considerable cost. Until shortly before the PTR the Claimants were represented by well-known solicitors and counsel and gave every impression of wishing to pursue the matter to judgment. Even after their solicitors

came off the record a few days prior to the PTR, the Claimants continued to give every indication that they intended to fight the trial.

5. Ms Kaur represented the Claimants herself at the PTR, acting as a director of the Claimants, and then subsequently sought an adjournment on their behalf on 27 October 2023 on various grounds, as more particularly described in my judgment of that date. For the purposes of that adjournment application, Ms Kaur provided a detailed witness statement and lengthy skeleton argument.
6. However, in circumstances which I dealt with in my judgment on 13 November 2023, having failed in that application to adjourn the trial, Ms Kaur attended at trial on the first day, only to inform the court out of the blue that it would not be in the Claimants' best interests for her to represent them at trial and that she did not intend to make an application to the court under CPR 39.6 to do so. Although this was not strictly an abandonment of the claim, it was tantamount to one; the effect of this step was inevitably to cause the court to dismiss the action. The Claimants had no-one else to present the claim on their behalf and obviously could not proceed without any representation at all.
7. It is clear from *PJSC* that an important feature in any decision to award indemnity costs in a case involving allegations of fraud that has been abandoned is the absence of any explanation. Here the only explanation given by Ms Kaur for her decision not to represent the Claimants at trial was: (i) that it was not in their best interests; and (ii) that in circumstances where she was being sued in other proceedings by these Defendants and they were planning to prosecute her criminally, that "it would not be advisable" for her to say that she was qualified to represent the Claimants at trial.
8. However, in my judgment, there are a number of significant problems with this explanation, pointed out by the Defendants in their skeleton argument today. As I have previously noted, Ms Kaur is a sophisticated litigant with legal training. She appears to have practised as a litigator in the US, as she says in her witness statement in the proceedings. She can be expected to understand, and I believe she does

understand, the need to be open and frank with the court and the need to provide the court with evidence to support any particular proposition that she might make.

9. She was able to prepare for and represent the Claimants at the day-long application to adjourn the trial. Yet she did not mention at that hearing her concern that it would not be in the Claimants' best interests for her to represent them either at the PTR or at the application to adjourn the trial. She did not suggest that it was not advisable for her to say that she was qualified to represent them and nor did she advance as a reason for the adjournment application a desire to obtain separate representation. Indeed, Ms Kaur has never produced any evidence to support the proposition that the Claimants might intend to instruct alternative lawyers and that she simply could not act for them herself. Her skeleton for the adjournment application specifically disavowed the Claimants' lack of representation as a reason for seeking an adjournment and she provided no evidence whatever to suggest that the Claimants wished to seek legal representation going forward or that they had even investigated the potential to retain a new team of lawyers.
10. Against that background, her statement, made without warning, at the start of the trial that she was not prepared to represent the Claimants looks rather like a strategic decision: a final throw of the dice to try to delay the trial. Mr Anderson tells me today that there are no criminal proceedings against Ms Kaur and so no legitimate reason for her be concerned about appearing on behalf of the Claimant companies as an advocate.
11. It is difficult to see how the decision not to represent the Claimants could possibly have been taken with their best interests in mind in circumstances where it could only lead, as I am sure Ms Kaur understood, to a dismissal of their claim. I warned Ms Kaur at the trial that this was the likely consequence of her decision, but she maintained her position. It would appear from various observations that she made on the first day of the trial (including as to the existence of criminal proceedings involving her personally) that her decision not to represent the Claimants may more likely have been motivated by her own personal interests than by consideration of what might be in the best interests of the Claimant companies.

12. I consider, as I have said in my judgment dismissing the claim, that this was an outcome of Ms Kaur's own making. If and in so far as the Claimants had a funding problem, that was not raised as a reason for the application to adjourn. No evidence of a lack of funding has ever been produced, even now.
13. In the circumstances I consider that the explanation given by Ms Kaur does not begin to justify the Claimants' conduct in failing to bring to court anyone to represent them.
14. The Defendants submitted that Ms Kaur's conduct to date suggests that she commenced this claim in fraud primarily to advance her own interests in this highly acrimonious dispute with her family and that this claim was motivated by a desire to obtain leverage rather than a genuine belief in its merit. Whilst there are plainly grounds for making such a submission and whilst I suspect it may be relevant in connection with other applications later on, I do not need to make any final decision on this point for present purposes and I decline to do so, particularly given Ms Kaur's absence from court. The lack of a proper explanation for deciding not to represent the Claimants in a claim of fraud (a decision which led to that claim being dismissed) is enough to warrant an order for indemnity costs, on my understanding of *PJSC*. I observe only that had Ms Kaur truly believed in the Claimants' case, it is difficult to see why she could not have presented their case to the court at the trial.
15. Turning to whether this case has been conducted in ways that take it out of the norm, I consider that it has. The defendants have identified various categories of conduct, in addition to the conduct I have already referred to, on which they rely, and I can deal with each one shortly, as follows.
16. **First, serious allegations of misconduct.** In addition to what I have already said about the Claimants' conduct, I agree with the Defendants that the Claimants appear to have sought to use these proceedings as a vehicle to advance wide ranging allegations of serious misconduct against Mitch Gill, his advisers and various other third parties. None of these allegations has been pleaded and although some have been made in witness statements from Ms Kaur, there is, as far as I am aware, not a shred of documentary evidence to support them. I address various of these allegations in my

judgment on the adjournment application. I accept the Defendants' submissions that serious allegations of malicious prosecution, deception, surveillance, deceit, assault and intimidation cannot be ignored, that they are outside the norm (particularly where they are unsupported by any evidence) and that it is inevitable that costs will have been incurred in connection with them.

17. **Second, allegations of destruction of evidence.** The Claimants appear consistently to have alleged in this claim and in the previous Redemption Proceedings that Mitch has wiped all of his father's electronic devices. When the Defendants' solicitors sought an explanation for this serious allegation from Withers, at the time representing the Claimants, they said in a letter dated September 2022 that the allegation was based upon the “high level review” and impression of Ms Kaur and that they had instructed a forensic expert to interrogate the relevant devices. Despite confirming that they would share the results of this expert analysis with the Defendants, Withers never did. Mr Anderson, on behalf of the Defendants, today showed me two letters from the Defendants' solicitors pursuing this matter, owing to the seriousness of the allegation but, tellingly, the only information received from Withers in response was that they had collected well over 100,000 documents from the devices that Ms Kaur said had been wiped or deleted. This confirmation is entirely inconsistent with Ms Kaur's allegation of destruction of evidence, and, in circumstances where the Claimants have never disclosed any forensic evidence supporting such an allegation, I can only infer that it is entirely misconceived. I accept the Defendants' submission that it was unreasonable and outside the norm to make this allegation and thereafter to fail to withdraw it.
18. **Third, disclosure.** The court imposed a deadline for disclosure of 16 December 2022. However, it seems that the Claimants' solicitors did not commence their review until 21 November 2022 and that this resulted then in two requests for extensions of time, with Master Pester indicating that the second extension was a final one. Notwithstanding that indication, the Claimants provided significant supplemental disclosure on 30 June 2023. Although, on its own, this conduct is unlikely to be enough for the purposes of an order of indemnity costs, it does seem to me to be

relevant as part of an overall pattern of conduct which, taken together, went beyond the approach reasonably to be expected of litigants in a normal case.

19. **Fourth, accessing privileged information.** It is common ground that Ms Kaur accessed Mitch Gill's privileged information. The Claimants refused to provide any details about this for many months and it ultimately led to an order for indemnity costs made on 18 July 2023 in respect of various applications that flowed from that initial conduct. I accept again that this is part of the pattern of overall conduct on the part of the Claimants in connection with these proceedings which generally shows a desire to obstruct the proper process of the court. I should observe that Ms Kaur did file a bundle of documents relating to privileged documents in connection with this hearing today very shortly before the hearing (and that she made mention of privileged documents in her email of 9.21 a.m.), but she has made no attempt to direct me to any documents in particular or to identify how and why she relies upon these documents. Her email of 9.21 a.m. focusses on the use of privileged documents by the Defendants, something I have dealt with previously. I cannot see that this affects my overall decision that indemnity costs are appropriate in all the circumstances of this case.

20. **Fifth, the introduction of peripheral claims.** The Claimants introduced claims by amendment, referred to as the Unauthorised Payment Claims. It is fair to say that the Defendants did not object to their introduction by way of amendment, but Mr Anderson submits that these claims were hopeless, not least because in the Redemption Proceedings it is said by the Claimants that these payments were advanced pursuant to the Facility Agreement and the Loan Agreement and secured by two legal charges on the Hotel. It is therefore accepted by the Transomas companies in the Redemption Proceedings that they were paid and are repayable. It would certainly appear to be an abuse of process for the Claimants to advance the entirely inconsistent case in these proceedings that the payments were unauthorised and made in breach of duty. The Claimants have not chosen to seek to justify this case at trial and accordingly, doing the best I can on the information now available to me, the apparently abusive nature of these claims appears to be another, additional, factor which takes the pursuit of these proceedings out of the norm.

21. Sixth, **failures to comply with court orders**. The Claimants have failed to comply with various court orders made over the course of the proceedings. Aside from the fact that the Claimants sought repeated extensions of the deadline for disclosure and then failed to have regard to that deadline by the service of yet further disclosure, as I have said, on 30 June 2023, they also failed to comply with: (1) the court's order of 18 July 2023 requiring them to answer specific questions relating to their possession of privileged material; (2) the court's order of 28 September 2023 requiring a response to the Defendants' RFI and relating to the exchange of experts' reports; and (3) the court's order of 27 October 2023 in respect of the payment of costs. This is again supportive of a pattern of conduct which appears to me to be out of the norm.
22. Seventh, **other conduct in the lead up to trial**. There appears to have been a woeful failure to engage with the Defendants in the lead up to trial, no doubt in part explained by the fact that the Claimants had lost their solicitors just before the PTR. But a party's status as a litigant in person does not excuse them from complying with court rules. The application to adjourn was wholly unmeritorious, as my judgment from that application records, and the Claimants continued to make very serious allegations against all and sundry without a shred of evidence on which to do so. On this front, Mr Anderson showed me today that, despite allegations by Ms Kaur at that application to adjourn that the Claimants had not been given access to PwC documents, in fact Mitch Gill had signed a consent form for such disclosure long ago.
23. I accept that this conduct taken together will inevitably have substantially increased the Defendants' costs of dealing with these proceedings. Taking the pursuit from the outset of these proceedings of a fraud claim and then its effective abandonment without adequate explanation on day one of the trial, together with the conduct to which I have referred, I consider that this is an appropriate case for the order of indemnity costs of the proceedings. The Claimants have not acted as responsible and reasonable litigants. Their conduct has inevitably resulted in considerable additional expenditure of costs by the Defendants and has no doubt substantially increased the stress already placed on the Defendants by reason of the serious nature of the allegations that were being pursued. This is plainly outside the norm.