Neutral Citation Number: [2024] EWCC 10

Case No: 27 of 2020

IN THE COUNTY COURT AT BRISTOL
BUSINESS AND PROPERTY WORK

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 1 October 2024

Before :

HHJ PAUL MATTHEWS

- -

Between :

TRACY ANN TAYLOR	**Applicant**
- and -	
(1) OLGA SAVIK	**Respondents**
(2) PHILIP RYLE	

- -
- -

Steven Fennell (instructed by **Irwin Mitchell**) for the **Applicant**
Dale Timson (instructed by **Direct Access**) for the **First Respondent**
The **Second Respondent** in person

Consequential matters dealt with on paper

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be noon on I October 2024

HHJ Paul Matthews :

Introduction

1. On 10 September 2024 I handed down my judgment on the trial of an application by the trustee in bankruptcy of the second respondent, for orders relating to a property in the name of the first respondent, alleged by the trustee to have been purchased with monies provided by the second respondent: see [2024] EWCC 7. The application was originally based on three matters: (1) the doctrine of sham; (2) transaction at an undervalue; (3) fraud on creditors. However, on the first day of the trial I stayed the application in respect of matters (2) and (3): see [2024] EW Misc 18 (CC). The case continued only in relation to the sham argument, and was dismissed by my judgment. This is my supplementary judgment on consequential matters, chiefly costs, following a written procedure in which all parties made submissions.

The trustee and the first respondent

2. The trustee and the first respondent have agreed that:

   (1) the stay on the transaction at an undervalue and fraud on creditors issues should be lifted, and the application dismissed on all three grounds;

   (2) the trustee will apply to remove all restrictions on the property at the Land Registry;

   (3) the trustee shall pay the first respondent's costs of the application, to be subject to detailed assessment if not agreed; and

   (4) the trustee will make a payment on account of such costs.

3. The trustee and the first respondent have not agreed (i) the basis of the assessment of costs; (ii) the issue of interest on costs; (iii) the amount of the payment on account of costs.

Basis of the assessment of costs

4. As to (i), the first respondent seeks costs against the trustee on the indemnity basis. This requires that the conduct of the unsuccessful party or parties should have been, not just unsuccessful, but "out of the norm": *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hamer Aspden & Johnson* [2002] EWCA Civ 879, [39]. This requires something outside the ordinary and reasonable conduct of proceedings: *Esure Services Ltd v Quarcoo* [2009] EWCA Civ 595, [25].

5. The first respondent in summary relies on:

   (a) the trustee's aggressive pursuit over three years of the allegation of a joint plan by the respondents to conceal the true beneficial ownership of the property, including allegations of money-laundering and failing to give full disclosure, and the registration of restrictions on the property;

(b) the trustee's failure to disclose documents on which she wished to rely until during the trial, to disclose 6000 documents until the evening before the last day of the trial, to put both versions in her possession of the witness statement of the liquidator of Rare Stamp Associates Ltd into the agreed bundle, and at least to attempt to obtain unredacted versions of documents provided to her by HMRC and the CPS; and

(c) the trustee's issue and pursuit of the transaction at an undervalue and fraud on creditors claims when section 419 of the Proceeds of Crime Act 2002 prevented this court from making any order on them, until this consequence was accepted on the first day of the trial, and the claims were stayed (and have now been abandoned).

6. In response the trustee in summary says (using the same numbering):

(a) pursuit of the claims was not aggressive, but in accordance with the rules, and such pursuit was justified by the evidence available to the trustee, including the first respondent's unusual story;

(b) the first respondent failed to engage with the trustee over the compilation of the bundle, and the fact that she was a litigant in person made no difference;

(c) the first respondent is in effect mounting a collateral challenge to the dismissal of her earlier application to stay the transaction at an undervalue and fraud on creditors claims; they have now gone because of the court's findings of fact in the sham claim.

The trustee also complains that the first respondent failed to engage with pre-action correspondence, and refers in particular to a letter of 20 August 2021.

7. In my judgment there is nothing in (a). The trustee's approach to the pursuit of the litigation reflected the apparent strength of the material which was available to her. That pursuit fell within the range of ordinary and reasonable conduct of the litigation.

8. As to (b), I consider that here the trustee's conduct fell well outside the norm. Most cases have instances of odd documents coming to light late, or even during trial. But what happened here went well beyond that. I could excuse the point about the two versions of the witness statement as a regrettable oversight. But you ought to know before the trial starts which documents you want to rely on. You should not have 6000 further documents to disclose at the end of the trial. And you really should make considerable rather than token efforts to obtain unredacted copies of the redacted documents supplied by third parties. After all, these were not state secrets. I consider that the points under (ii) by themselves justify an award of costs on the indemnity basis.

9. As to (c), I do think that the trustee should have accepted the position under section 419 of the 2002 Act sooner then the first day of the trial. Her failure to do so (no doubt on advice) will have caused considerable costs to be thrown away. I would not have awarded indemnity costs for the whole claim on this basis, but added to point (b) it confirms my decision overall.

10. Finally, whilst it is nearly always better if parties set out their position in correspondence – at least initially – the first respondent's letter of 20 August 2021 explains clearly why she considered it better not to do so at that stage. She understood that the crown court was going to resolve the issue, without the need for civil proceedings. I do not think that her position is to be criticised, but even if it were it would not mitigate the trustee's position on (b) and (c).

Interest on costs

11. Issue (ii) relates to interest. The court has power under CPR rule 44.2(6)(g) to order the payment of interest on costs as from or to a certain date. In *Bim Kemi AB v Blackburn Chemicals Ltd* [2003] EWCA Civ 889, [18], the Court of Appeal said there was no reason why the court should not exercise this power when a receiving party had had to put up money to pay a solicitor and had not had the use of the money in the meantime. The dates from and to which interest is paid are a matter of judicial discretion, though ordinarily the dates on which invoices are paid should be the start dates: *Douglas v Hello! Ltd* [2004] EWHC 63 (Ch). The rate is at large, and can be a commercial rate: *ABCI v Banque Franco-Tunisienne* [2003} EWCA Civ 91, [93].

12. The first respondent seeks such an order in respect of two sums. The first is the sum of £109,152.80, being the sum owed to her former solicitors, Thrings LLP, at their contractual rate of 8%, from the several dates on which their invoices were issued. The second is the remainder of her costs, at 6% (that is 1% above base rate of 5%) from the time they were paid by the first respondent.

13. The trustee submits that the order should be for costs to run only from the date of the order. She says that the claim to interest at 6% per annum is unsupported by any evidence as to what if anything she would have earned by way of interest. Finally, she says that her claim for interest at 8% per annum is unreasonable, because any loss suffered by the first respondent arises from her failure to pay her solicitors on time.

14. In my judgment the purpose of CPR rule 44.2(6)(g) is to enable the court more precisely to reflect the actual expense to which the receiving party has been put in taking or defending legal proceedings. So, where a litigant spends money that she could have employed to earn a return elsewhere, or borrows money at a commercial rate in order to fund proceedings, the court can include relevant interest that the party has had either to forgo or to pay.

15. Here, if the first respondent showed that she used money that was earning a return elsewhere in order to pay the legal costs, or had borrowed it at interest, then in principle the court could compensate her for that loss by adding interest at the appropriate rate to the costs themselves, in each case from the date of payment. However, it is for her to show that she has suffered a loss. Here, there is no evidence that the money concerned was being so used, or borrowed, and therefore no evidence of any loss suffered. So, I award no interest on costs paid.

16. On the other hand, where the first respondent's solicitors have lawfully charged her interest on unpaid costs, in principle she should be compensated for that. I do not accept that her loss arises from her own failure to pay her solicitors on

time. There is no evidence that she had money but declined to use it for the purpose. Her loss arises because she was put to incurring a liability that she should not have had to incur. As to the rate, it is no higher than judgment rate, and I do not think I am in a position to hold that that is excessive. I therefore award interest at 8% on each of the amounts owed to Thrings LLP from the date of each invoice to judgment.

Payment on account of costs

17. Issue (iii) relates to payment on account, under CPR rule 44.2(8). In *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm), Christopher Clarke LJ said:

> "22. It is clear that the question, at any rate now, is what is a 'reasonable sum on account of costs' …
>
> 23. What is a reasonable amount will depend on the circumstances, the chief of which is that there will, by definition, have been no detailed assessment and thus an element of uncertainty, the extent of which may differ widely from case to case as to what will be allowed on detailed assessment. Any sum will have to be an estimate. A reasonable sum would often be one that was an estimate of the likely level of recovery subject, as the costs claimants accept, to an appropriate margin to allow for error in the estimation. This can be done by taking the lowest figure in a likely range or making a deduction from a single estimated figure or perhaps from the lowest figure in the range if the range itself is not very broad."

18. The trustee and the first respondent agree that a payment on account should be made, but disagree on quantum. The first respondent asks for £207,081.07, and the trustee offers £120,000 (increased from an earlier offer of £80,000). In cases where costs budgeting was carried out, and a costs management order made, the court will pay close attention to the budget. But there was no such budgeting here, and no such order.

19. The first respondent says she has incurred total legal costs of £267,049.98, though this does not include costs allowed to a litigant in person at the prescribed rate. She accepts that she was ordered to pay the trustee's costs of particular applications, and must deduct from her total costs her own costs of dealing with those applications. She has estimated these at just under £20,000, and therefore claims the reduced sum of £247,509.98. To that sum she has added £11,341.36 by way of estimated interest, making a total of £258,851.34.

20. The first respondent asks for 80% of that total if her costs are to be assessed on the indemnity basis, or 70% if they are to be assessed on the standard basis. She relies on the lengthy and complex nature of the proceedings, what she says is the ease of recovery of any overpayment (given that the first respondent owns a property), the lack of suggestion of any appeal, the fact that the trustee was funded by insurance, and the likelihood of an assessment in the short term.

21. The trustee challenges the high proportion of partner time in Thrings' costs (299.5 hours out of 447.6), and the use of average hourly rates, which exceed

the guidelines. She also challenges costs incurred by Elliot Mather, the first respondent's solicitors in the POCA proceedings, and QCH Legal, who did work in connection with the restrictions registered on the land register.

22. It is undesirable for me at this stage to delve too deeply into these matters, but I say that, at first sight, these points are, at the least, worth further investigation in due course. I accept that the first respondent points to factors complicating and lengthening the proceedings, which she says justify so much partner time and at higher rates, but still I need to reflect the challenges in my assessment of the "reasonable sum".

23. The trustee also says that the "fact of duplication of work by Mr Timson cannot be doubted", and that "there must be a serious risk that R1 will not readily repay any overpayment to her … " As to the first point, duplication of effort is not the point. Instead, it is whether the costs were reasonably incurred and reasonable in amount. As to the second, I doubt on the facts here that the risk is anything like as serious as the trustee makes out. I bear these points in mind, but I do not treat them as of any significant weight.

24. Given that I have decided to order costs on the indemnity basis, I consider that I am justified in ordering a payment on account that is higher than if costs were to be assessed on the standard basis. But in all the circumstances I think that 80% is too high, in a case where there was no costs management and there is much that will need to be examined on assessment.

25. Overall, I will order a payment on account of two thirds of £258,851.34, that is, £172,567.56. No good reason has been advanced for this to be payable in other than the usual 14 days' time, especially since it is three weeks since my judgment was handed down. The convenience of insurers is not a good reason. As requested by the first respondent, it should be paid to Thrings' client account.

The trustee and the second respondent

Costs

26. As between the trustee and the second respondent, the position is different. First of all, the second respondent acted in person throughout. His claim is therefore one under CPR rule 46.5, and, in effect, to the hourly rate prescribed (by CPR PD 46, para 3.4, *ie* £19), multiplied by the number of hours spent. Secondly, no substantive relief was sought against the second respondent. He was joined so that he would be bound by the result.

27. CPR rule 44.6(1) provides:

> "Where the court orders a party to pay costs to another party (other than fixed costs) it may either –
>
> (a) make a summary assessment of the costs; or
>
> (b) order detailed assessment of the costs by a costs officer,
>
> unless any rule, practice direction or other enactment provides otherwise."

28. CPR PD 44 Para 9 relevantly provides:

> "9.1. Whenever a court makes an order about costs which does not provide only for fixed costs to be paid the court should consider whether to make a summary assessment of costs.
>
> 9.2. The general rule is that the court should make a summary assessment of the costs –
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> > (a) at the conclusion of the trial of a case which has been dealt with on the fast track, in which case the order will deal with the costs of the whole claim; and
> >
> > (b) at the conclusion of any other hearing, which has lasted not more than one day, in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim,
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> unless there is good reason not to do so, for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily."

29. It is clear from the word "may" in rule 44.6(1) that the court has a discretion as to whether there is summary or detailed assessment. The general rule is set out in para 9.2 of PD 44, but that the discretion remains is clear from para 9.1. The present case is not within the general rule in para 9.2. Nevertheless, given that the issues which arise are general in nature and relate to the proceedings as a whole, it seems more appropriate for me as the trial judge to deal with it summarily, and I shall do so.

30. CPR rule 46.5 relevantly provides:

> "(3) The litigant in person shall be allowed –
>
> > (a) costs for the same categories of –
> >
> > > (i) work; and
> > >
> > > (ii) disbursements,
> >
> > which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;
> >
> > (b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and
> >
> > (c) the costs of obtaining expert assistance in assessing the costs claim.

> (4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be –
>
> > (a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or
> >
> > (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46."

31. So, the second respondent may claim for work of the same categories and disbursements as if he had been professionally represented, but since he does not seek to prove financial loss in using his time to prepare the case, he is limited to the hourly rate of £19, for the appropriate number of hours. The appropriate number will be "the time reasonably spent on doing the work", as referred to in rule 46.5(4)(b).

32. As to the amount of time spent on preparing his defence, the second respondent says it amounted to 8640 hours while he was in prison before he was released in March 2020, and 6720 hours since then. The sums claimed are therefore £164,160 and £127,680 respectively, a total of £291,840, on top of which the second respondent claims interest at an annual rate of 8%.

33. The trustee submits that no time should be allowed for the preparation of the second respondent's various defence documents and witness statements, because they did not engage with the claim. The trustee accepts that he should be allowed 104 hours at £19 (making £1,976) for time spent during the trial and in addition four hours preparing for the PTR and three days preparing for the trial.

34. So far as concerns the claim to costs, I do not agree that the test is whether the second respondent's statements of case and witness statements "engaged" with the claim. The trustee chose to sue the second respondent, and has lost. The second respondent was entitled to put in such materials as he thought would assist the court (and himself), and he did so. As a litigant in person without access to relevant legal advice, he cannot be criticised for preparing for this trial in ways that did not in fact advance his case except minimally.

35. On the other hand, he is limited to the time "reasonably spent on doing the work". I do not consider that 15,360 hours is a reasonable time to spend on preparing this case. At 8 hours per day, five days a week, that would be 384 weeks, or nearly seven and a half years (without holidays), of preparation. Naturally, a litigant in person with no legal experience will take longer than a trained and experienced lawyer to carry out a particular piece of work, but there are still limits.

36. This was a sprawling and complex case, and involved thousands of documents, including detailed accounts going back over many years. In my judgment it would have been reasonable for the second respondent to spend up to about 400 hours in preparing for it. That would be about 10 weeks of 8-hour days and 5-

day weeks. If I add another 100 hours for the trial period itself, that makes 500, and at £19 per hour that comes to £9,500. I shall therefore award him that sum.

37. However, I see no basis for awarding interest on that sum. The second respondent has not shown that he has suffered any financial loss, *eg* by paying money to third parties for services, which meant that he could not use his money to gain a return.

The counterclaim

38. So far as concerns the second respondent's counterclaim, it is not clear to me how much of this remains live. Certainly, I heard no argument about it at the trial. It is quite separate from the issues raised by the trustee in her application against the first respondent. In my judgment, it would be best dealt with in the same court as the remaining matters arising out of the second respondent's bankruptcy, that is, the County Court at Leeds.

39. I will therefore transfer what remains of the counterclaim to that court, with the direction that the second respondent issue an application for directions, setting out what remains to be decided, so that the matter can be properly dealt with. If no application is issued within 28 days of my order, the counterclaim will stand automatically dismissed. The first respondent is obviously not required as a party to this, and can be removed from the counterclaim if it continues.

Conclusion

40. I hope I have dealt with all outstanding issues, and look forward to receiving a draft minute of order for consideration.