[2014] UKUT 0457 (TCC)

Appeal number: FTC/66/2013

PROCEDURE – application for an order for security for costs – CPR, rule 25 - whether reason to believe appellants will be unable to pay respondents' costs if ordered to do so – significance of ATE insurance – whether just to make an order in all the circumstances of the case – weight to be attached to lateness of application

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

(1) GSM EXPORT (UK) LIMITED (in administration)
(2) SPRINT CELLULAR DIVISION LIMITED (in administration) Appellants

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS Respondents

TRIBUNAL: JUDGE ROGER BERNER

Sitting in public at 45 Bedford Square, London WC1 on 19 September 2014

Andrew Trollope QC and Leon Kazakos, instructed by Smith & Williamson LLP, for the Appellant

Jamie Sharma, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. At the hearing before me on 19 September 2014, I dismissed the application of the respondents for security for costs in these appeals. I gave brief reasons for doing so and indicated that I would provide a reasoned decision in writing. This is that written decision.

2. The background to the respondents' application is that both the appellants, GSM and Sprint, are in administration. Both companies went into administration on 14 September 2009. GSM is insolvent. Sprint's statement of affairs dated 21 October 2009 suggests that it is in surplus. However, that surplus depends on there being a realisable asset of £2,288,715 in respect of Sprint's claim for payment of VAT which was denied by the decision of the First-tier Tribunal which is the subject of Sprint's appeal. If that appeal is unsuccessful before this tribunal, Sprint too will be insolvent.

The procedural history

3. There was no dispute as to the procedural history. I gratefully adopt the following summary largely from Mr Sharma's skeleton argument.

4. On 5 December 2012, the First-tier Tribunal released its decision in the appellants' appeals upholding the decision of the respondents to deny the repayment of input tax of £5,291,780 claimed in respect of transactions in the VAT periods 04/06, 05/06 and 07/06. The basis of the denial of input tax recovery was that the appellants' transactions were connected with the fraudulent evasion of VAT and that each of the appellants knew (and, in the alternative, should have known) that they were so connected.

5. The appellants applied to the First-tier Tribunal for permission to appeal on 17 January 2013. That application was refused on 5 March 2013. The appellants renewed their application for permission to appeal to this tribunal on 4 April 2013. Permission was granted on 7 June 2013. On 8 November 2013, this tribunal notified the parties that the appeal would be heard from 21 to 23 October 2014. Directions were subsequently issued and correspondence exchanged between the parties concerning preparation for the hearing.

6. The appeals remain listed for the October 2014 hearing.

7. On 11 August 2014, the respondents informed the appellants' representatives, Smith & Williamson LLP, that they considered that this was an appropriate case for which the appellants should provide security for the respondents' costs in this tribunal. Smith & Williamson replied on the same day saying that it "seems highly improper" for the respondents to raise the question of security for costs at that stage.

8. On 27 August 2014, the respondents provided Smith & Williamson with an estimate of their costs for the Upper Tribunal proceedings and requested an indication

from the appellants, by 29 August 2014, as to whether security for costs would be provided voluntarily.

9. On 29 August 2014 the respondents filed their notice of application for security for costs in the sum of £67,679.90. The application attached a witness statement of Ms Catherine Shaw (a solicitor in the Solicitor's Office of the respondents) in support; the exhibits to that witness statement were hand delivered the same day. In the letter of service, the respondents proposed directions for the exchange of evidence in order to progress the application.

10. On 2 September 2014, this tribunal proposed that the application be listed on 17 October 2014. However, on 3 September 2014, the tribunal wrote to the parties to say that Judge Bishopp had indicated that there should be an earlier hearing to consider submissions as to whether the tribunal should consider making a direction for security for costs at "this late stage" and what directions should be made, including for exchange of evidence. That was followed, on 16 September 2014, by my own directions listing a hearing in respect of this matter on 19 September 2014.

11. In the meantime, on 5 September 2014, Smith & Williamson had confirmed to the respondents that there was litigation insurance for both appellants and had asserted that it would be adequate to meet the respondents' costs. I shall describe the detail of that insurance cover separately. On 8 and 9 September 2014, the respondents requested a copy of the insurance policy. This was disclosed, in redacted form, on 11 September 2014. The same day, the respondents requested the un-redacted insurance policy. This was provided on 12 September 2014.

12. The respondents emailed Smith & Williamson on 15 September 2014. That email stated that the respondents were not satisfied that the insurance policy sufficiently mitigated against the risk that the respondents' costs in this tribunal would not be paid. The respondents would, therefore, invite the tribunal to make a preliminary determination on whether, given the timing of the application, an order for security for costs could be made in principle.

13. In a letter to the respondents dated 15 September 2014, followed by a notice of application dated 16 September 2014, the appellants sought "full and proper particulars of [the respondents'] application for security for costs".

The law

14. There was no dispute before me that this tribunal has jurisdiction to make an order for security for costs. That was confirmed by Judge Bishopp, sitting in this tribunal, in *Blada Limited (in liquidation) v Revenue and Customs Commissioners* [2013] UKUT B7, on the basis that in relation to matters incidental to this tribunal's functions this tribunal has, pursuant to s 25 of the Tribunals, Courts and Enforcement Act 2007, the same powers as the High Court. The judge accordingly held, at [22], that the procedure was governed by the rules contained in Part 25 of the Civil Procedure Rules 1998.

15. Under CPR, rule 25.13, the tribunal may make an order for security for costs if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order and a relevant condition has been met. In the context of this application, the relevant condition is in rule 25.13(2)(c), namely that the appellants are companies and "there is reason to believe that [they] will be unable to pay the [respondents'] costs if ordered to do so".

16. Subject to the relevant condition being satisfied, this tribunal accordingly has a discretion, to be exercised judicially. The tribunal has to carry out a balancing exercise, taking all the relevant circumstances into account.

17. The relevant condition is a threshold test. Unless it is satisfied, the jurisdiction to make an order for security for costs does not arise (*Geophysical Service Centre Co v Dowell Schlumberger (Me) Inc* [2013] EWHC 147 (TCC), per Stuart Smith J at [12]).

18. Once that threshold is crossed, the relevant principles are those summarised by Peter Gibson LJ in the Court of Appeal in *Keary Developments Ltd v Tarmac Construction Ltd and another* [1995] 3 All ER 534, beginning at p 539. It is not necessary to set those principles out extensively. So far as material to this application, it will suffice to note the following:

> (a) The balancing exercise must weigh the injustice to the party against whom an order is sought if that party is prevented from pursuing, in this case, its appeal against the injustice to the respondents if no security is ordered and, having been successful, the respondents find themselves unable to recover costs.
>
> (b) The possibility or probability that the appellants will be deterred from pursuing their appeals is not without more a sufficient reason for not ordering security.
>
> (c) Regard should be had to the appellants' prospects of success. But the tribunal should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure. In the case of an appeal to this tribunal, I take the view that this factor will include the fact that the appellant has been given permission to appeal, and will thus have established that there are arguable grounds of appeal.
>
> (d) Before a tribunal refuses to order security on the ground that it would unfairly stifle a valid claim, the tribunal must be satisfied that, in all the circumstances, it is probable that the claim would be stifled. There may be cases, likely to be exceptional, where this can properly be inferred without direct evidence. However, it is for the party against whom an order is sought to satisfy the tribunal that it would be prevented from continuing the litigation. The tribunal should consider not only whether the appellant can provide security out of its own resources, but also whether it can raise the amount needed from its directors, shareholders or other backers or interested persons.

(e) The lateness of the application for security is a circumstance which can properly be taken into account. What weight, if any, this factor should have and in which direction it should weigh must depend upon matters such as whether blame for the lateness of the application is to be placed at the door of the respondents or at that of the appellants. It is proper to take into account the fact that costs have already been incurred without there being any order for security. Nevertheless, it is appropriate for the tribunal to have regard to what costs may yet be incurred.

The threshold test

19. The threshold test will be met in this case if there is reason to believe that the appellants will be unable to pay the respondents' costs if their appeals are unsuccessful. As both the appellants will, if they are unsuccessful in their appeals, be insolvent, this test turns on the terms of the insurance policy which is relied upon by the appellants.

The insurance policy

20. The insurance policy ("the Policy") is an "after the event" (ATE) policy issued by the insurer, IGI Insurance Company Limited ("IGI"), to both of the appellants as the insured persons. There was no dispute that IGI is a bona fide insurance company, and that the Policy is a valid and enforceable policy of insurance. However, Mr Sharma submitted that the respondents nevertheless had reason to believe that the appellants would be unable to pay their costs, and that this belief had not been affected by the Policy, having regard to certain of its terms.

21. First, Mr Sharma argued that the Policy gives the insurer an unfettered discretion to determine whether or not the appeals are successful. He referred me to the insurance cover which materially provided:

> "Subject to the Policy Terms and Conditions, if **Your Claim** is **Unsuccessful**, **We** will indemnify **You** against:-
>
> The amount of any **Defendant's Costs** which **You** have become legally liable to pay as the result of pursuing **Your Claim** …"

22. Mr Sharma then referred to the definition of Final Disposal:

> " '**Final Disposal**' of Your Claim occurs when a settlement is agreed or where there has been a judgement by a court or tribunal of competent authority, when no further appeal is possible or the time limited for any appeal has expired without any appeal being made. We will determine whether Your Claim has been Successful or Unsuccessful for the purposes of this Policy following Final Disposal of Your Claim. In order to enable Us to make this determination You must notify Us in writing within 7 days of the Final Disposal of your Claim taking place."

23. I do not accept that, on the basis of this definition, the insurer has a discretion, still less an unfettered discretion, to determine whether the appeals are successful or

unsuccessful. In my judgment, the role of the insurer in this regard is one of certification, and not discretion. The insurer is required to certify the result of the appeals for the purposes of the Policy in order to provide certainty. My view is reinforced by the fact that the question whether the appeals are successful or unsuccessful is not left to an interpretation of those terms; the Policy provides a comprehensive definition of each term as follows:

> " **'Successful'** Your Claim is Successful if, as a result of pursuing Your Claim, You obtain a judgement, award, order or settlement under or pursuant to which You are entitled to receive monies which are sufficient to enable You to pay the full amount of (1) Your Disbursements (2) the Premium and (3) any Defendant's Costs out of the monies so received.
>
> **'Unsuccessful'** Your Claim is Unsuccessful if, despite pursuing Your Claim, You do not obtain a judgement, award, order or settlement under or pursuant to which You are entitled to receive monies which are sufficient to enable You to pay the full amount of (1) your Disbursements (2) the Premium (3) any Defendant's Costs out of the monies (if any) so received."

24. In my view, any concern that the respondents may harbour that, despite the appellants' appeal being dismissed, with the result that the appellants would receive no recovery of VAT, a bona fide insurer might nevertheless exercise its power of determination to the effect that the Claim has not been Unsuccessful in those circumstances is misconceived. There is in my judgment not even a theoretical risk of such an insurer acting in that manner. It is fanciful. Not only do I consider there is no real risk that such an insurer would do such a thing, in my view the insurer would have no power to do so under the terms of the Policy.

25. Secondly, Mr Sharma argued that Section 5 of the Policy provided a broad range of reasons whereby the Policy could be rendered voidable and over which the respondents would have no control. It is correct that Section 5 contains a number of conditions that the appellants must comply with in order to make a claim under the Policy. These include cooperation with solicitors, ensuring the accuracy of information provided to the solicitors, keeping disbursements as low as possible, notification and agreement of settlement terms, notification of Final Disposal of the claim, discontinuance of the claim in certain circumstances, change of solicitors and access to information. Failure to comply with the conditions entitles the insurer to terminate the Policy. In that event the insurer would cease to be liable, but the appellants would remain liable to pay the premium.

26. Conditions of an ATE policy, breach of which could lead to cancellation of the policy, were considered by Stuart Smith J in *Geophysical* and, before that, by Akenhead J in *Michael Phillips Architects Limited v Riklin* [2010] EWHC 834 (TCC). In *Michael Phillips*, Akenhead J considered whether an ATE insurance could provide adequate or effective security for a defending party's costs. Whether that was the case depended on whether the policy in question provided some secure and effective means of protecting the defendant in circumstances where security for costs should be provided by the claimant. At [18], Akenhead J set out the following principles, which

he regarded as a matter of commercial common sense as well as in accordance with authority:

> "(a) There is no reason in principle why an ATE insurance policy which covers the claimant's liability to pay the defendant's costs, subject to its terms, could not provide some or some element of security for the defendant's costs. It can provide sufficient protection.
>
> (b) It will be a rare case where the ATE insurance policy can provide as good security as a payment into court or a bank bond or guarantee. That will be, amongst other reasons, because insurance policies are voidable by the insurers and subject to cancellation for many reasons, none of which are within the control or responsibility of the defendant, and because the promise to pay under the policy will be to the claimant.
>
> (c) It is necessary where reliance is placed by a claimant on an ATE insurance policy to resist or limit a security for costs application for it to be demonstrated that it actually does provide some security. Put another way, there must not be terms pursuant to which or circumstances in which the insurers can readily but legitimately and contractually avoid liability to pay out for the defendant's costs.
>
> (d) There is no reason in principle why the amount fixed by a security for costs order could not be somewhat reduced to take into account any realistic probability that the ATE insurance would cover the costs of the defendant."

27. I should observe that this paragraph of Akenhead J's judgment was among those adopted by Stuart Smith J in *Geophysical* (at [13]), subject to a potential reservation, but one that was not elaborated, regarding paragraph [18](d). That sub-paragraph was not determinative of the application in *Geophysical*, and so Stuart Smith J did not address it further. Likewise, it is not a material consideration in this case.

28. The question, as described by Stuart Smith J in *Geophysical*, at [20], is not whether the ATE insurance is better security than cash or its equivalent; it is unlikely, as Akenhead J observed, to do so. The question is whether there is reason to believe that the claimant, or as in this case, the appellants, will be unable to pay the respondents' costs despite the existence of the ATE policy. An ATE policy may, depending on its terms, suffice so that the tribunal is not satisfied that there is reason to believe that the appellants will be unable to pay the respondents' costs.

29. In *Michael Phillips*, Akenhead J took the view (at [27] – [28]) that, on the basis of the cancellation provisions in the ATE policy before him, the insurance provided no real security for the defendant's costs. He based this conclusion on the fact that the policy could be cancelled (i) on any failure by the claimant to fulfil its "responsibilities", (ii) on the termination of a conditional fee agreement, if the insurer in good faith believed that the claim was unlikely to be successful, and even (iii) for no reason (good or bad). It was furthermore at least arguable that there was no obligation on the insurer to indemnify costs incurred up to the date of cancellation.

30. In *Geophysical*, Stuart Smith J distinguished the terms of the policy in that case from the terms of the policy at issue in *Michael Phillips*. At [37], he found that it was clear that, if the policy in that case were to have been cancelled, the insurer would remain liable to indemnify against defendant's costs which had been incurred before the date of cancellation. He concluded, at [41], that he was not satisfied that there was any evidence to support a submission that there was reason to believe that there were grounds on which the insurer could or would seek to argue that it was entitled to avoid or cancel the policy. Nor was he satisfied that there was anything more than a theoretical risk that circumstances would arise which would entitle the insurer to argue that it was entitled to avoid or cancel the policy.

31. In the Policy before me, certain events of cancellation would, it seems to me, entitle the insurer to terminate the Policy without any liability at all, including liability for costs up to the date of termination. On the other hand, in certain cases, the Policy makes clear that cover under the Policy would be terminated only from the date of the specific event, and that costs up to that time could be claimed: that is the case if the appellants decide not to settle the appeal on terms advised by their solicitors, not to discontinue the appeal if the insurer so requires on advice having been received that the prospects of success have fallen below 50%, or not to change solicitors at the insurer's reasonable request.

32. Other conditions, breach of which could lead to cancellation, relate to the conduct of the appellants. Having paid the premium, which is not refundable in the event of cancellation, there is no reason why the appellants should seek to engineer a breach, nor any reason to suppose that they, or their administrator, would conduct the litigation in any way other than to ensure that they complied with the conditions. Just as Stuart Smith J found in *Geophysical*, at [30], it would not be in the appellants' commercial interests to do otherwise. Any risk that exists in this regard is a theoretical risk only.

33. Having regard to the terms of the Policy at issue in this case, therefore, I am not satisfied that there is anything more than a theoretical risk that the insurer would argue that it was entitled to avoid or cancel the policy, such as to provide no cover for the respondents' costs.

34. There is, however, one feature of the Policy that caused me concern. It is that the Policy is written in terms that the beneficiaries of the Policy are the appellants themselves. The concern is whether this gives rise to a risk that, if the insurer indemnifies the appellants, and pays the relevant sums to the appellants, or strictly to the administrator of the appellants, those funds will simply fall into the general funds of the administration, to which the respondents will have no preferential or prior entitlement. That, I observe, was a particular concern of Akenhead J in *Michael Phillips*, as appears from his comment at [30]:

> "I do not see how it can be said that an insurance policy which does not provide direct benefits to the Defendants and under which they are not amongst the insured parties and which does provide for cancellation of the policy either for a large number of reasons or for no reason provides any appreciable benefit or raises any presumption or inference

that the Claimant will be able to pay the Defendants' costs if ordered to do so."

35. In this connection, Mr Sharma submitted that, since the administrator of the appellant companies was under a statutory obligation to perform his functions in the interests of the company's creditors "as a whole" (referring to Insolvency Act 1986, Schedule B1, para 3(2)), the respondents would have no special right to assert the debt in respect of an adverse costs order over and above those of the other creditors of the appellants. Although it might be possible for the respondents to give themselves a higher priority to other creditors, that, Mr Sharma said, would require a separate application to the court.

36. During the course of argument, I raised the possibility that the Policy might be assigned, by way of legal or equitable assignment, and whether in any event any monies paid by the insurer to the appellants, or their administrator, by way of indemnity for the respondents' costs would be impressed with a form of trust according to the principles stemming from *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567. Neither party was in a position to address me on those issues, but Mr Trollope produced a letter from the administrator of both appellant companies, received on 18 September 2014, to the effect that the administrator had determined that a payment received by way of indemnity under the Policy was not a company asset, and that this was something the administrator was able to do on his own initiative. In support of this, Mr Trollope referred me to Insolvency Act 1986, Schedule B1, para 67, which provides that the administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

37. I am bound to say that I do not myself consider that, in relation to a payment under an insurance policy of this nature, para 67 has the effect that the administrator may conclusively determine the extent of the company's property. My own further research following the hearing, on the other hand, suggests that, as a matter of law, a payment made by way of indemnity on the terms of the Policy may well be impressed with a *Quistclose* trust, as it will have been paid to the company for the specific purpose of that money being used to discharge the particular liability for the respondents' costs. Although *Quistclose* itself concerned moneys advanced to a company by way of loan (in that case to fund the payment of dividends), the principle is not confined to loans, but extends to cases where the person making the payment is a debtor of the company (see *Re Niagara Mechanical Services International Ltd (in administration)* [2001] BCC 393, per Ferris J at [33]).

38. On this basis, it seems to me reasonable to conclude that the risk of sums paid under the Policy by way of indemnity for the respondents' costs not being paid to the respondents because those sums would fall into the assets available to creditors of the appellants generally is not a real one. That would lead me to conclude that, having regard to my other findings concerning the effectiveness of the Policy, I would not be satisfied that the threshold test had been met, in that the respondents would not have established that there is reason to believe that the appellants will be unable to pay the respondents' costs if ordered to do so.

39. However, as that conclusion would turn on the resolution of the doubts I myself entertained as to the security available to the respondents if the payment under the Policy were made to the appellants, as beneficiaries of the Policy, and not directly to the respondents, and I heard no argument on the *Quistclose* issue, I turn to consider whether, on the assumption that the threshold test is met, and accordingly that I have jurisdiction to do so, I should exercise my discretion in favour of an order for security for costs.

The balancing exercise

40. Mr Sharma recognised that, in accordance with *Keary Developments*, to which I referred earlier, the timing of the respondents' application was relevant to the balancing exercise to be carried out by the tribunal. He candidly admitted that no reason could be offered by the respondents for the fact that an application had been made only a matter of weeks before the substantive hearing of an appeal that had been on foot since mid-2013, and in circumstances when at all times the respondents had been aware of the financial position of the appellants.

41. Mr Sharma sought to argue that little weight should be attached to the lateness of the application. He submitted that other factors should carry greater weight. These included the broad justice of the position, including the fact that the appellants, though not trading and apparently impecunious, nevertheless either had access to funds or to a funding arrangement which enables them to pursue their appeals, but not to meet potential liabilities for the respondents' costs. Mr Sharma pointed out that CPR, rule 25 contains no time limit by which an application for security for costs may be made. The focus should, he submitted, be on the effect, if any, on the appellants. There was no evidence that an order for security for costs would impact negatively on the appellants' appeals. By contrast, the effect on the respondents in the event the appeals are unsuccessful is both significant and quantifiable.

42. In support of his arguments on the justice of the position, Mr Sharma referred to *Calltel Telecom Ltd v Revenue and Customs Commissioners* [2008] STC 3246, and the reasons given by Briggs J, at [23], for exercising his discretion in favour of an order for security for costs. Those reasons were:

> "(1) It will not stifle the appeal. (2) Since I infer that Mr Gohir can afford to put the appellants in funds to provide the security, no injustice arises from the fact that their impecuniosity arises from the Revenue's refusal of the tax credit claimed. (3) It is clear that if no order is made but the Revenue win this appeal, the companies will not be able to pay the costs and it seems to me most unlikely that Mr Gohir will then pay them voluntarily by way of paying them on the companies' behalf. (4) The costs of a ten day appeal, since that is the estimate of the appeal, are likely to be substantial. (5) It is simply not just that by not having to provide security the companies and Mr Gohir can prosecute this appeal in circumstances where they incur no practical exposure to the Revenue's costs if they lose."

43. As regards whether an order would stifle this appeal, Mr Sharma correctly submitted that the burden was on the appellants to demonstrate such an outcome and there was no evidence that it would. Mr Trollope accepted that the burden was on the appellants, and that evidence and not mere assertion was required, but argued that the lateness of the application meant that the appellants had had no proper opportunity to address the question.

44. In *Calltel*, there was no question of the application having been made other than promptly. As Briggs J stated at [21], in that case notice was given of the intention to seek security relatively soon after the appeal had been notified. There was no unreasonable delay before the applications were launched. The same point was made by Judge Bishopp in *Blada*, at [37], where he noted that that was not a case in which the appellant had had very little time to produce the evidence that security could not be provided. In *Blada* the appellant had more than two years to produce evidence.

45. By contrast, the respondents are guilty of an unreasonable delay in raising, at a late stage in these appeal proceedings, and without any justification for the delay, the question of security for costs. Since the appeal was notified to this tribunal, both parties have been proceeding on the basis that no security for costs had been sought. Costs have been incurred on that basis, although it is of course the case that further substantial costs will be incurred between now and the end of the substantive hearing. But the fact that the appellants have been unable to produce evidence that the appeals would be stifled if an order for security for costs were made is entirely attributable to the lateness of the respondents' application and the truncated timetable for considering the application that such delay has mandated. The lateness of the application has given the appellants an unreasonably short time in which to arrange security, if an order were to be made. It would not, in my view, be in the interests of justice now to require the appellants to address these funding questions at a time when they are in the late stages of preparing for trial.

46. No evidence is before me as to the nature of the litigation funding the appellants are relying upon to fund their own costs of this appeal. Although the respondents invite an inference that the appellants either have access to funds or to a funding arrangement, I have no evidence of anything specific in that regard. Thus, there is no evidence of any person, such as Mr Gohir was in *Calltel*, being able to fund the provision of security.

47. The respondents essentially rely on the impecuniosity of the appellants and the insufficiency of the ATE Policy that has been proffered. I have substantially rejected the respondents' criticisms of that Policy, and I consider that there is a reasonable prospect that, even though the sums payable under the Policy are to be paid to the appellants, the respondents will have a claim on those proceeds such as to provide them with adequate security. In that context, I take the view that the unreasonable delay by the respondents in making this application, and in giving any indication to the appellants that the question of security for costs was in issue, and the effects of the late application on the ability of the appellants to respond to it, must be given due weight. In my judgment, having regard to all the circumstances, and giving weight to

the lateness of the respondents' application, it would not be just to make an order for security for costs against the appellants.

Decision

48. For the reasons I have given, I dismiss the respondents' application for an order for security for costs.

Costs

49. After I announced my decision at the hearing to dismiss the respondents' application, Mr Trollope sought an order for costs of the application. I indicated that an order would be made in principle, subject to summary assessment of the quantum following receipt of a schedule of costs.

50. Accordingly, I order that the appellants' costs of and incidental to the application shall be paid by the respondents, the amount to be summarily assessed by the tribunal, if not agreed.

ROGER BERNER

UPPER TRIBUNAL JUDGE

RELEASE DATE: 14 October 2014