



Neutral Citation Number: [2024] EWHC 3297 (Admin)

Case No: AC-2022-LON-002963

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2024

Before :

MR JUSTICE SWEETING

Between :

FERKO

Appellant

EALING MAGISTRATES COURT

1st Respondent

and

KAPIESA LTD T/A XARA ESTATES

2nd Respondent /

1st Defendant

and

SURINDER KUMAR

3rd Respondent /

2nd Defendant

and

KRISHNA KUMAR

4th Respondent /

3rd Defendant

MR MICHAEL MARSH-HYDE (instructed by **ALEXANDER SHAW SOLICITORS**) for
the **APPELLANT**

The **1st RESPONDENT** did not appear

MR SHARAZ AHMED (instructed **ON DIRECT PROFESSIONAL ACCESS**) for the **2nd RESPONDENT**
MR KAMAR UDDIN (instructed by **HSBS LAW**) for the **3rd and 4th RESPONDENTS**

Hearing dates: 13th March 2024

Approved Judgment

This judgment was handed down remotely at 14:00pm on 18th December 2024 by circulation to the parties or their representatives by email and by release to the National Archives

Mr Justice Sweeting :

Introduction

1. This is my judgment in relation to an application for costs following the successful appeal of Mr Ferko against a decision of the Ealing Magistrates Court. I handed down judgment on 14 October 2024, allowing the appeal and remitting the matter to the Magistrates' Court for a re-trial.
2. The appeal arose from a private prosecution brought by Mr Ferko under section 82 of the Environmental Protection Act 1990 ("the EPA") against his landlords, the Second, Third, and Fourth Respondents. Mr Ferko alleged that the Respondents were responsible for a statutory nuisance at the premises he rented, namely the presence of damp and mould.
3. At the close of the prosecution case in the Magistrates' Court, the Respondents successfully argued that there was no case to answer. I concluded that the Magistrates gave inadequate reasons for acceding to the Respondents' submissions in respect of the Second and Third Respondents and subsequently attempted to add to their reasoning after the Respondents had left the court. The Magistrates also improperly gave further, additional reasons for their decision in the case stated.
4. I found that the Magistrates had erred in law on a number of grounds. The Magistrates failed to appreciate that causation under the EPA does not require a "but for" test. There was also no requirement to establish that the property was in structural disrepair, only that it was prejudicial to health or a nuisance. Additionally, the Magistrates failed to consider whether the property was unfit for human habitation in circumstances where the expert evidence suggested that it was, contrary to section 9A of the Landlord and Tenant Act 1985.
5. In giving notice under section 82 of the EPA, the Appellant was not required to specify the cause of the alleged statutory nuisance, but only to give sufficient particulars of it to enable the recipient to take remedial steps. There was no basis for concluding that the Appellant had failed to give proper notice.
6. It follows from this brief summary that the Appellant succeeded in all aspects of the contested appeal.

Costs Orders

7. There are two extant costs orders. First, in respect of the application to amend the case stated, Ritchie J ordered, on 18 July 2023, that the Second, Third and Fourth Respondents should pay 75% of the Appellant's costs of the application. Secondly, I made an order following the hearing of the substantive appeal on 13 March 2024, ordering the Second, Third and Fourth Respondents to pay the Appellant's costs of the appeal.
8. Neither order provides for any apportionment of costs between the Respondents. Although the prosecution gave rise, potentially, to different consideration in relation to the Second Respondent, the Magistrates did not accede to the submissions of no case to answer on grounds which differed as between the Respondents. The appeal was then resisted on what were, fundamentally, the same grounds. Five of the seven questions in the case stated related to the cases of all of the Respondents. It would be extremely difficult to separate out common costs from costs attributable to specific parties. The Appellant's cost schedules were available before the substantive hearing. The issue of apportionment was not raised by any of the Respondents, either at the hearing before Ritchie J or before me, when agreeing draft orders. In the circumstances it is appropriate that the costs orders should be made against all of the Respondents, as they in fact have been.

Summary Assessment

9. The Appellant contends that the Court should summarily assess the costs, whereas the Respondents contend that the costs should be subject to a detailed assessment. The Appellant submits that, since the appeal hearing lasted a single day, the Court should make a summary assessment of the costs in accordance with CPR 44.6 and the Guidance on Summary Assessment of Costs. He contends that the Court is well-placed to assess the costs, having heard the appeal. He argues that the parties should not have to incur further costs and delay as a result of the matter being sent for detailed assessment. I agree; this appears to me to be an appropriate case for summary assessment.

Assessment

10. The general principles that apply to both summary and detailed assessments of costs are the same. The objective is to ensure that only reasonable costs are allowed. Where the standard basis applies, as here, this means that the costs must also be proportionate. The starting point is that the costs will be assessed on the standard basis. Rules 44.3(1) and (2) of the Civil Procedure Rules (CPR) provide that on the standard basis the court will only allow costs which are proportionate to the matters in issue and will resolve any doubt as to proportionality in favour of the paying party.
11. Rule 44.3(5) sets out a non-exhaustive list of factors that the court may take into account when considering proportionality. These include: the sums in issue in the proceedings; the value of any non-monetary relief in issue in the proceedings; the complexity of the litigation; any additional work generated by the conduct of the paying party; any wider factors involved in the proceedings, such as reputation or public importance; and any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.

12. While not binding, the court may consider the guideline hourly rates for solicitors in Appendix 2 of the Guidance, taking into account factors such as the grade of fee earner, location of the work, and complexity of the case. The court will consider the time spent on the case and whether that time was reasonably incurred. Counsel's fees should reflect the level of preparation, time spent in court, and the complexity of the case.
13. In **West v Stockport NHS Foundation Trust**, the Court of Appeal provided guidance on the application of the proportionality test. The court should first assess the reasonableness of the costs claimed and then consider the proportionality of the total figure, taking into account the factors listed in CPR 44.3(5).
14. The costs claimed are set out in two costs schedules, both dated 12 March 2024 (although this appears to be a typographical error). The first relates to the costs of the application to amend the case stated which was heard by Ritchie J on 11 July 2023. The second relates to the costs of the substantive appeal hearing.
Application to Amend the Case Stated
15. The total costs claimed in respect of Application to Amend the Case Stated are £16,902.00. Solicitor's fees are £5,370.00 for work done by a Grade A fee earner, Mr. Chaudhry Pervaiz, at an hourly rate £300.00. The schedule of work done on documents lists 13 separate items with the time claimed for each, totalling 13.1 hours at a cost of £2,040.00.
16. The Third and Fourth Respondents contend that it was unnecessary for a Grade A fee earner to attend the hearing. They suggest that the attendance should be disallowed entirely or, alternatively, reduced to reflect the hourly rate of a Grade C fee earner. Similarly, they argue that travel costs should be disallowed or reduced.
17. Counsel's fees are £8,715.00 divided into fees for advice/conferences/documents (£5,040.00) and fees for the hearing on 11 July 2023 (£3,675.00). The Third and Fourth Respondents argue that the fees for advice/conferences/documents are excessive. They suggest a reduced fee of £1,750.00. They also contend that the hearing fee is excessive and propose reducing it to £2,750.00

Case Stated (Substantive Appeal)

18. The total costs claimed for the substantive appeal are £37,717.00. Solicitor's fees are £11,720 for work done by Mr. Pervaiz, and a Grade C fee earner, Mr. Basit Raza, whose hourly rate is claimed at £200.00 (and who did very little). The schedule of work done on documents lists 32 items, totalling £4,500.00, all at the Grade A rate; including items such as preparing hearing bundles and authority bundles. The Schedule claims 2.8 hours of telephone attendances on the Appellant giving a total of £840. The Third and Fourth Respondents dispute this claim, arguing that 2.8 hours is excessive considering there is also a claim for 2 hours for letters to the Appellant
19. The Second Respondent challenges the reliance on a Grade A fee earner for a significant portion of the work. He argues that a Grade C fee earner could have handled most of the litigation with Counsel's assistance and that the Grade A fee earner's hourly rate is excessive. The Second Respondent also considers the time claimed for attendances to be disproportionate, especially given the use of Counsel.
20. The Third and Fourth Respondents take issue with the time spent on telephone calls and correspondence with the court. They consider the claimed hours excessive and disproportionate. They also dispute the need for a Grade A fee earner to attend the hearing.
21. Counsel's fees are £19,755.00 for advice/conferences/documents (£13,755.00) and a brief fee for the hearing (£5,740.00).

Approved Judgment

22. A breakdown of Counsel's fees, provided by the Appellant in his submissions, details the specific work undertaken on various dates, with time and fees for both the Application to Amend and the Case Stated.
23. The Second Respondent contends that both the costs for advice/conferences/documents and the brief fee are excessive and unreasonable.
24. The Third and Fourth Respondents consider Counsel's fees for both advice/documents and the hearing to be excessive and suggest significantly reduced figures.

General points of dispute

25. The Second Respondent argues that the two Statements of Costs contain duplications, particularly in relation to Counsel's fees and the schedule of work done on documents. The Appellant, however, asserts that while some work related to both the Application and the Appeal, work has been appropriately allocated between the two matters, and there has been no duplication.
26. The Second Respondent contends that the Appellant's reliance on a Grade A fee earner for a significant portion of the work was excessive and resulted in disproportionate costs. He submits that a Grade C fee earner could have handled most of the litigation, given that Counsel was instructed throughout.
27. The Respondents generally argue that the costs claimed are excessive and disproportionate.
28. The Appellant, in response, highlights the complexity of the case, noting that both the first judgment (concerning the application to amend the case stated) and the second judgment (concerning the substantive appeal) have been reported in legal publications. He argues that the case raised complex issues relating to criminal procedure and matters of principle in relation to prosecutions under s.82 of the Environmental Protection Act 1990, justifying the need for a Grade A fee earner. As to Counsel's fees it is pointed out that they were reduced for the first hearing to reflect the time actually spent and that the agreed fee for the Appeal hearing represented good value considering the work ultimately undertaken.
29. The Appellant also draws attention to the fact that the Respondents were represented by lawyers of equivalent seniority. The Second Respondent instructed Counsel directly (so in effect a Grade A litigator), while the Third and Fourth Respondents were represented by a Grade A fee earner. This, it is argued, suggests an equality of arms between the parties in terms of legal representation, which may weigh against a finding of any disproportionate use of Grade A fee earners or Counsel. The Respondents have not filed their own costs schedules, so a direct comparison is not possible; however, potential disproportionality on one side is not cured by disproportionality on the other.
30. I do not think that I can properly conclude, as argued, that the Respondents may have underestimated the work involved simply because they did not have to present their defences before the magistrates. Had their submissions of no case to answer failed then they would have had to do so and indeed they had expert evidence of their own.

Conclusions

31. Proportionality is not simply about reducing costs to the lowest possible figure. The court must strike a balance between ensuring that the receiving party is properly compensated for their reasonable costs and protecting the paying party from excessive and disproportionate costs. However, the court should not endorse disproportionate or unreasonable costs and must ensure that the final figure is reasonable and proportionate, even in the absence of challenges to individual items.

Approved Judgment

32. Whilst the use of a Grade A fee earner may have been justified in principle as well as his attendance at the hearing, the extensive reliance on this grade for tasks potentially suitable for lower-grade fee earners suggests, in my view that costs have been inflated. I cannot see much evidence that there has been a cost saving, as suggested, because of Mr. Pervaiz's expertise or that the routine tasks associated with the litigation demanded such expertise or could not have been carried out by a more junior grade. It is clear that a Grade C fee earner, Mr Raza, was available and could have been utilised beyond the 10 minutes of work which appear on the hearing cost schedule. The attendance claims are high and not a single item on the Schedule of work done on documents for either hearing is other than at Grade A rates.
33. The hearing before Ritchie J. was intended to dispose of both the application to amend and the substantive hearing, but, in the event, there was insufficient time. Aggregating the fees therefore suggests that counsel is charging, as the Respondent's submit, over £8,000 for what was intended to be a single hearing, with preparatory work costing over £18,000. I bear in mind that two hearings were nevertheless required as were amendments to the bundle and the skeleton argument. However, and without wishing to detract from the assistance provided by counsel, for which I am grateful, the overall fees do strike me as disproportionate.
34. I consider that the appropriate way to reflect the conclusions set out above by way of summary assessment in this case is to make a percentage reduction. I reduce the overall sum claimed in respect of the application to amend by 20% (to £13,521.6) of which the Appellant is entitled to 75% under the extant costs order (£10,141.2). I reduce the overall sum claimed for the substantive hearing by one third (to £24,893.22).
35. The parties should draw up and file a draft order (or orders if there is disagreement as to the form of order), giving effect to this judgment and dealing with the date by which payment should be made and any ancillary matters.

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