

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CH D)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 May 2021

Before :

Tom Leech QC (sitting as a Judge of the Chancery Division)

Between :

DOCKLOCK LIMITED

Claimant

-- and --

C CHRISTO & CO LIMITED

Defendant

Mr Reuben Comiskey (instructed by **Boyes Turner LLP**) for the **Claimant**
Mr Paul Letman (instructed by **Carter Perry Bailey LLP**) for the **Defendant**

APPROVED JUDGMENT

I direct that pursuant to CPR PD39A 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.

Covid-19 Protocol: This judgment is handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30 am on 26th May 2021.

Tom Leech QC:**I. Introduction**

1. In this judgment I adopt the defined terms and abbreviations which I used in my reserved judgment dated 19 February 2021 (the "**Judgment**"). Further, where I refer to paragraphs below, I intend to refer to paragraphs in the Judgment (unless I state otherwise).
2. In section VII of the Judgment I held that there was a binding agreement that Docklock should assume liability for the salaries of Nicholas and Mr Forrester in lieu of management fees: see [103]. I also held that this agreement came to an end on 9 February 2015 or, alternatively, on 9 June 2015: see [105] ii). However, I also held that Docklock was entitled to set off an occupation charge for 66-70 Parkway for the whole of the Relevant Period and that the occupation charge should be £79,000 per annum or £216.44 per day: see [131] and [136].
3. Given that the Moylan Order fixed the Relevant Period for the Account as the period from 1 October 2014 to 1 September 2016, Christo was only entitled to charge management fees for the period of four months and nine days from 1 October 2014 until 9 February 2015 or 9 June 2015. I therefore adopted the simple expedient of treating the occupation charge for that period as a quid pro quo for the management fees.
4. However, I gave Christo permission to apply to ask the Court to fix the precise amount of the management charge: see [106]. I also gave both parties permission to apply to ask the Court to determine both the management fee and the occupation charge if they did not accept the set off of one against the other and considered there to be a significant imbalance between the two figures: see [131] and [136].
5. Both parties have exercised that permission and invited the court to determine the two figures. Perhaps unsurprisingly, Docklock argues that the occupation charge should be much higher than the management fee and Christo argues the reverse. The parties have raised a range of issues. But in summary, Docklock asks the Court to add £23,711.10 to the amount which I have found due. By

contrast, Christo asks the Court to reduce it by a total of £42,831.60. This figure is made up of £8,830.80 for the period from 1 October 2014 to 9 February 2015 and £34,000.80 for the period from 10 February 2015 to 9 June 2015.

II. The Issues

6. By letter dated 26 February 2021 Boyes Turner set out the findings which Docklock asked the Court to make and in his Note also dated 26 February 2021 Mr Letman set out the findings for Christo. On 12 March 2021 the parties exchanged further submissions. On 23 March 2021 I received responsive submissions from Mr Letman and on 30 March 2021 I received responsive submissions from Mr Comiskey. By emails dated 17 May 2021 both parties confirmed that they wished me to deal with all outstanding issues in writing. Those issues are as follows:

- (1) What was the date on which the agreement for the payment of management fees was terminated?
- (2) What is the correct rate for the management fee?
- (3) For what period should the occupation charge be set off against the management fee (if any)?
- (4) Should Christo forfeit the whole or any part of the management fee?
- (5) Should I permit Docklock to recover additional charges which were excluded from the Account in error?

III. Determination

(1) *Date of Termination*

7. Mr Comiskey submitted that since I had made a finding of fact that the agreement to pay management charges came to an end on 9 February 2015, it was not open to Christo to go behind it. I reject that submission. Both parties took an "all or nothing" approach to the question whether there was an agreement for management fees although the evidence of both Nicholas and

Chris (which I reviewed at some length in the Judgment) was more nuanced. As a consequence, neither party addressed me on the question whether any agreement was terminated during the Relevant Period and, if so, when. It is clear from [105] ii) that there were two possible answers to this question and in giving Christo permission to apply, I intended to permit Christo to argue for the second answer rather than the first (if it so wished).

8. However, after receiving detailed submissions on the point, I am satisfied that the alternative which I favoured in [105] ii) was correct and I find that the agreement for the payment of management fees came to an end on 9 February 2015. I now set out my reasons for reaching this conclusion:

- i) Mr Letman submitted that it was wrong in principle and contrary to the evidence to find that the agreement for the payment of two salaries in lieu of management fees was terminated any earlier than 9 June 2015. The difficulty with this submission is that it was wholly inconsistent with Chris's unequivocal evidence that he brought the contract to an end in November 2014: see [95] iii).
- ii) Moreover, this was not just Chris's intention. He gave effect to it in his memo dated 7 November 2014 by requesting Nicholas and Deepak to ensure that Christo paid Mr Forrester's salary with effect from 1 November 2014. It is common ground that Christo paid Mr Forrester's salary from that date.
- iii) Mr Letman reminded me that Nicholas did not accept these instructions in his memo dated 7 November 2014 (and timed at 16.20) but argued that the current status quo should be maintained until commercial decisions had been considered and made by the board. I agree that this was Nicholas's immediate stance. But he had clearly accepted Chris's termination by 30 January 2015. In paragraph 3.5 of the minutes Docklock resolved to cease paying management charges to Christo in accordance with Chris's memo dated 7 November 2014: see [14]. In paragraph 4.3 Nicholas explained this resolution as follows:

"The directors have also made resolution 3.5 and 3.6 because it is not appropriate for the Company to be paying the salary of Mark Forrester who is an employee of Christo & Co, nor to pay for the provision of his motor vehicle. The directors also note that the resolutions comply with requests from CC contained in his above mentioned memoranda dated 7 November 2014."

- iv) Mr Letman sought to argue that it would not be right to construe the minutes of the meeting as acceptance of Christo's offer to terminate the contract for property management services. I reject that submission. In my judgment, paragraphs 3.5, 3.6 and 4.3 of the minutes provide clear evidence of Docklock's acceptance of the request made by Chris in his memo dated 7 November 2014 that Docklock should stop paying management fees to Christo.
- v) Mr Letman also sought to argue that the letter dated 9 February 2015 could not be treated as communicating acceptance of that offer to Christo. I disagree for the reasons given by Mr Comiskey. The letter denied the existence of a formal contract and asked Christo to treat the letter as "notice terminating our arrangements for the provision of management services". In the alternative, it gave four months' notice to Christo to cease providing the relevant services in circumstances where Christo was maintaining that it was providing the services for free.
- vi) Although Betty did not treat Chris's memo as an offer to terminate the contract, that was the effect of her letter. It is fanciful to suggest that she or Nicholas intended to pay Christo management fees for another four months if they did not have to. Indeed, as Mr Comiskey pointed out, they had taken a number of resolutions to recover money from Christo: see paragraph 4.6.
- vii) Mr Letman tried to suggest that the meeting of the board of directors of Docklock on 30 January 2015 was the meeting to which Nicholas was referring in his memo dated 7 November 2014. He submitted, therefore, that no decision to terminate the agreement could have been taken by either party until that meeting had taken place.

- viii) This submission was inconsistent not only with Chris's evidence but also with the documents. In the memo Nicholas was clearly referring to the board of directors of Christo and no such meeting took place before he ceased to be a director on 19 December 2014. Moreover, it is clear that Chris did not agree to this proposal because Christo assumed liability for Mr Forrester's salary immediately. Finally, a board meeting would only have been necessary if Chris did not have the authority to terminate the contract or to make an offer to do so. Wisely, however, Mr Letman did not go that far since his case throughout the trial had been that Chris had authority to act on behalf of both Christo and Docklock.
9. I add that it would have been open to me to find that Christo repudiated the contract for the provision of management services. I accept Mr Comiskey's submission that a contract with no express terms as to duration is terminable upon reasonable notice and that Christo failed to give notice (whether reasonable or otherwise). However, Mr Comiskey did not argue for repudiation and Christo continued to provide services until 30 January 2015. Moreover, the minutes of the meeting on 30 January 2015 do not suggest that Nicholas understood Chris to be refusing to perform the contract. Indeed, if anything it was the reverse. Chris wanted Christo to provide the services and ultimately obtained an injunction to enable it to do so whilst Nicholas wanted Christo to stop providing the services and instruct alternative agents. In my judgment, therefore, a consensual termination on 9 February 2015 remains the best interpretation of the parties' conduct in a context where they were shadow boxing in anticipation of a number of different outcomes to the divorce proceedings.
- (2) *Rate*
10. Christo's primary case was that it was entitled to a fee at the rate at which it invoiced Docklock, namely, 5% of the rents collected. I reject that submission. I found that the terms of the contract were that Docklock would pay the salaries of Nicholas and Mr Forrester in lieu of management fees: see [103]. In my judgment, the management fee should be calculated on that basis. I would have been more sympathetic to the submission that this involved a complicated

exercise if both parties had not rejected my original decision to set off the occupation rent against the management fees.

11. On the figures, Mr Comiskey submitted that the fee should be based on Mr Forrester's salary alone because Docklock continued to pay Nicholas after 1 November 2014. He also submitted that I should exclude the commission element and adopt a daily rate of £137.26 based on the previous years' accounts. Mr Letman submitted that the fee should be based on the combined salaries of both Nicholas and Mr Forrester (because Nicholas ceased to be a director and part of the management function of Christo) and should include all of their benefits (including the provision of their cars). Based on these assumptions, he submitted that the correct figure was £283.34 per day.
12. I prefer Mr Letman's submissions on this issue. The parties agreed that Docklock would assume the liability for paying the two senior employees in lieu of management fees. It is clear from Chris's evidence that this was an economic and tax-efficient way to fix a price for the services and I see no reason why Docklock did not remain liable to pay the same price for the same services after 1 November 2014. Docklock continued to pay Nicholas after 1 November 2014 not because it was complying with its contractual obligations but because the parties had fallen out and he was no longer working for Christo at all. I also accept that Docklock should be liable for those benefits which it provided to both employees. I therefore adopt Mr Letman's figure of £283.34 per day.
13. However, Mr Letman's figures assume that Docklock should be liable for the whole period from 1 October 2014 to 9 February 2015 and Mr Comiskey pointed out that Docklock paid the salaries of both Nicholas and Mr Forrester for the month of October 2014. Indeed, Nicholas was still working for Christo during October 2014 and Chris did not terminate or attempt to terminate the contract until the following month. Accordingly, I find that Docklock paid the management fee in full for October 2014 and that Christo was entitled to a management fee of £28,617.34 (i.e. £283.34 x 101).

(3) *Occupation Charge*

14. Mr Comiskey submitted that although Docklock paid the contractually agreed salaries in lieu of management charges, Docklock ought to be entitled to set off the occupation charge for the entire period between 1 October 2014 and 9 February 2015. I accept that submission. Mr Letman did not advance a contrary argument and his own figures were based on the assumption that the occupation charge would apply for the whole period. Accordingly, I find that Docklock is entitled to set off £28,570.08 against the management fee of £28,617.34. I therefore find that the management fee to which Christo is entitled after setting off the occupation charge is £47.26.

(4) *Forfeiture*

15. Mr Comiskey also submitted that if I found that Christo was entitled to a management fee for the period between 9 February 2015 and 9 June 2015, then those fees ought to be forfeited. Mr Letman argued that the question of forfeiture did not fall within the liberty to apply; that it was *res judicata*; and that it was without merit. In the event, it is unnecessary for me to decide any of these issues since the additional management fee of £47.26 to which I have found Christo to be entitled was *de minimis*.

(5) *Additional Charges*

16. In calculating the service charge payable by Christo as part of the occupation charge I accepted Mr Forrester's evidence both as to the calculation of the service charges and the percentage which Christo should pay: see [137]. I therefore adopted the figure of £14,330.68 which he had set out in MAF5. Mr Comiskey pointed out that this was not the total of all of the service charges (as I had assumed it to be) but only the total for electricity and that I had failed to include Christo's share of the expenses for the whole building of £3,603.66 and Christo's share of the insurance of £5,297.78.
17. In their letter dated 26 February 2021 Boyes Turner also pointed out that in the Scott Schedule Christo had admitted a liability of £5,219.19 for 63% of the insurance and two additional figures of £1,031.50 in respect of "Life safety

systems repair" and £710.69 in respect of external repairs (although by exchange of submissions on 12 March 2021 Docklock no longer pursued the final two items).

18. I have reviewed MAF5 again and I am satisfied that the figure of £14,330.68 was not a cumulative total and that Mr Forrester was accepting that Christo should be liable not only to pay a service charge of that sum for electricity but also service charges of £3,603.66 for building expenses and £5,297.78 for insurance. I have also reviewed the Scott Schedule again and Christo made a clear admission that it was liable for a very similar figure for insurance.
19. I am satisfied therefore that I ought to have added the sum of £8,901.44 to the sum of £14,330.68 and to have held that the total service charge payable by Christo was £23,232.12. In principle, I would be prepared to correct the Judgment at [137] to substitute this figure.
20. Mr Letman submitted that it was too late for me to correct the figures because they did not fall within the permission to apply and the Judgment should stand (subject to any appeal). I reject that submission. As Mr Comiskey submitted, I am entitled to change my mind at any time before my order is drawn up and perfected: see *Re L-B (Children)* [2013] 1 WLR 634 at [16] to [19]. In my judgment, this is an appropriate case in which I should exercise my discretion to do so.
21. It is obvious from MAF5 and the Scott Schedule that £14,330.68 was not a cumulative figure and Mr Letman did not suggest otherwise. Moreover, both parties have submitted that I should vary the figures in the Appendix in their favour. The position might have been different if I had struck the Account and made an order for payment before the issue had been raised. But Docklock raised it before I had made a final determination of the amount to which it was entitled or made an order for payment. I will therefore correct [137] so that the figure of £23,232.12 should be substituted for £14,330.68 and my final order will reflect that correction.

IV. Disposal

22. For the reasons which I have given, I order that the summary of my findings relation to the management fee and occupation charge which I set out in [138] should be adjusted as follows:
- i) The management fee of £224,493.20 should be increased by £28,617.34 to £253,110.54.
 - ii) The occupation charge of £122,937.92 should be increased by £28,570.08 to £151,508.00.
 - iii) The figure of £23,232.12 should be substituted for £14,330.68 in relation to the service charge.
23. These adjustments produce a net figure of £78,370.42. This figure will be substituted for the figure of £87,224.60 in the Appendix and I leave the parties to agree now the final total. I pay tribute to both Mr Comiskey and Mr Letman for their well-argued and engaging submissions both oral and written. I only add that the parties might have been better advised to accept the simple course which I originally adopted in the Judgment at [131] rather than incur the additional time and costs given that the overall result was that I varied the amount for which Christo was liable by £47.26.