Neutral Citation Number: [2021] EWHC 2362 (Ch)

Case Nos: E00YE350, F00YE085

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

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

Date: 23/08/2021

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

BETWEEN:

AXNOLLER EVENTS LIMITED

Claimant

and

(1) NIHAL MOHAMMED KAMAL BRAKE
(2) ANDREW YOUNG BRAKE

Defendants

AND BETWEEN:

(1) NIHAL MOHAMMED KAMAL BRAKE
(2) ANDREW YOUNG BRAKE
(3) TOM CONYERS D'ARCY

Claimants

and

THE CHEDINGTON COURT ESTATE LIMITED

Defendant

- -

Andrew Sutcliffe QC and William Day (instructed by **Stewarts Law LLP**) appeared on behalf of **Axnoller Events Ltd and The Chedington Court Estate Ltd**
Mrs Nihal Brake appeared on her own behalf and that of **Mr Andrew Brake and Mr Tom D'Arcy**

Summary costs assessment, on written submission only

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Approved Judgment

I direct that pursuant to CPR PD 39A 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.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 11:20 am.

HHJ Paul Matthews :

Introduction

1. On 19 August 2021 I decided that the Brakes should pay 50% of the costs of the Guy Parties of the application notice of 26 June 2021, to be summarily assessed: see [2021] EWHC 2343 (Ch). This will be on the standard rather than indemnity basis: see CPR rule 44.3(4). Summary assessment is dealt in the procedural rules with at CPR r 44.6(1)(a), and PD 44 para 9.

2. In carrying out an assessment, the court must not allow costs which have been unreasonably incurred or are unreasonable in amount (CPR rule 44.3(1)), and must only allow costs which are proportionate to the matters in issue, the benefit of any doubt being given to the paying party (CPR rule 44.3(2)). I have now received and considered written submissions on summary assessment, and my decision is as follows.

Submissions

The Brakes

3. The Brakes challenge the charging rates for the solicitors, referring to the Senior Courts Costs Office guideline hourly rates for 2010. They challenge also the number of hours for which the solicitors have charged, and have criticised the method of presentation of costs of dealing with documents. They also complain that the employment of both a silk and a junior barrister was disproportionate, and they compare the total sum claimed of £68,729 unfavourably with the agreed budget for the trial of the Possession Proceedings, at £61,000. Finally, they ask the court to take into account the parties' relative financial positions and the Brakes' health issues..

The Guy Parties

4. The Guy Parties refer me to the new 2021 guideline hourly rates recently approved by the Master of the Rolls, due to come into force on 1 October 2021. They say that the present is both legally and factually complex litigation, justifying the instruction of London solicitors. They refer me to the decision of the Court of Appeal in *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132. They also say that this was a very document heavy application. In addition, they say they were justified in instructing both leading and junior counsel. They criticise the Brakes' comparison with the budget for the three- day trial of the Possession Claim as irrelevant.

Discussion

General

5. I accept that this litigation *as a whole* between the parties is peculiarly wide ranging, factually complex and, at least in part, legally difficult. I accept that

this particular application was a document heavy application, in large part because of the adduction of over a thousand pages of evidence by the Brakes. I also accept that one of the applications involved a wholly new area of law, although the other was a fairly standard application of established principles. But otherwise I do not consider that there was anything especially difficult about these applications.

London solicitors

6. The Guy Parties have instructed London solicitors, who are inevitably more expensive than provincial solicitors. But *Wraith v Sheffield Forgemasters Ltd* shows that that by itself does not make their retainer unreasonable when it comes to assessing the costs as between the parties. In that case Mr Truscott had instructed a small firm of London solicitors (ATC) to act for him in a county court case after he became dissatisfied with his previous solicitors (MFC). The judge in the county court said it was unreasonable for him to do so because their charging rates were higher than those of local solicitors. The Court of Appeal allowed an appeal by Mr Truscott.

7. Kennedy LJ (with whom Waite and Auld LJJ agreed) said (at 141):

> "The following are matters which, as it seems to me, the judge should have regarded as relevant when considering the reasonableness of Mr. Truscott's decision to instruct A.T.C. (1) The importance of the matter to him. It was obviously of great importance. It threatened his home. (2) The legal and factual complexities, in so far as he might reasonably be expected to understand them. Due to the incompetence of M.F.C. the matter had taken on an appearance of some complexity. (3) The location of his home, his place of work and the location of the court in which the relevant proceedings had been commenced. (4) Mr. Truscott's possibly well-founded dissatisfaction with the solicitors he had originally instructed, which may well have resulted in a natural desire to instruct solicitors further afield, who would not be inhibited in representing his interests. (5) The fact that he had sought advice as to whom to consult, and had been recommended to consult A.T.C. (6) The location of A.T.C., including their accessibility to him, and their readiness to attend at the relevant court. (7) What, if anything, he might reasonably be expected to know of the fees likely to be charged by A.T.C. as compared with the fees of other solicitors whom he might reasonably be expected to have considered."

8. In the present case I consider that the retainer of the London solicitors was reasonable. The property the subject of the Possession Claim is worth several million pounds, and the Guy Parties have been kept out of possession for the best part of three years. The facts of the case are complex, and parts at least of the claim are legally complex. The matter is being tried in the High Court rather than the county court, albeit in Bristol rather than London. This is the regional centre for High Court work relating to the location of the properties concerned.

Charging rates

9. As to the charging rates for the solicitors in the present case, the rates claimed are £695 for grade A, £525 and £445 for grade B, £370 and £325 for grade C and £210 for grade D. I accept that the 2010 summary assessment guidelines are now well out of date. In a case like this, I would simply put them on one side as of little assistance. Although they are strictly speaking not yet in force, the new 2021 guidelines (which have been approved by the Master of the Rolls) have already been used in summary assessment in the High Court: see *eg ECU Group plc v Deutsche Bank* [2021] EWHC 2083 (Ch), [25]. I consider that I should take these guidelines into account.

10. Even so, I consider that the rates claimed here are well over the top, even for London firms. All the fee earners except the trainee solicitor and the costs draughtsman are charged at more than £100 an hour in excess of the new *top* guideline rate (for "very heavy commercial and corporate work by centrally based London firms"). I accept that it is only a guideline, and there will be cases which justify an even higher rate. But I do not think that the work done on this application justifies anything in excess of that rate. If anything, it justifies less.

Hours charged

11. As to the number of hours charged, I see nothing wrong with the attendances upon the applicants, the respondents and others. I agree however with the Brakes that it is not right to charge for the attendance at Court of both Mr Gatt QC *and* Mr Spendlove. I am also concerned that the statement of work done on documents does not break down the work into its component parts, but simply gives an omnibus description in the left-hand column. This does not enable me to see whether particular areas of the work done on documents may have been excessive. I can only say that (as a former commercial litigation solicitor) I regard the total number of hours recorded as surprisingly high, even for a document heavy application.

Counsel

12. I do not there is anything unreasonable or disproportionate in the employment of both leading and junior counsel in an application of this kind in this particular litigation. But I am concerned that the fees charged should be reasonable and proportionate, taken together. A total of £20,000 for these applications, taking just less than one day to deal with, is in my judgment too high.

Costs budget comparison

13. I do not think that there is any helpful comparison to be made with the costs budget for the trial of the Possession Claim. It may seem surprising at first sight that the costs of a three-day trial should be less than the costs of these applications, but the main problem is that we are not comparing like with like. In relation to the trial, that is only one phase in the litigation budget. Here there is not only the cost of being in court, but the costs of all the preparation as well. (As it happens, the budget concerned has since been revised anyway, because the needs of the trial are now different.)

Other matters

14. Finally, I make clear that, in my judgment, on a summary assessment of costs, the relative financial strength of the parties as between each other, and the state of health of one or other of them, are irrelevant. I have to decide what is reasonable and proportionate for the Guy Parties to spend on this application.

Decision

15. Summary assessment of costs is not expected to be a line-by-line billing exercise, like detailed assessment. It is intended to be a broad brush approach: see *eg Football Association Premier League v The Lord Chancellor* [2021] EWHC 1001 (QB), [20]. Here I am satisfied that the amounts to be charged for the solicitors are excessive, in the sense that (i) the hourly charging rates should be rather lower, (ii) the work done on documents is significantly more than it should be, and (iii) the attendance at the hearing of one or other of Mr Gatt QC and Mr Spendlove should not be charged for. Accordingly, instead of £47,789, I propose to allow £25,000.

16. So far as the fees for counsel are concerned, I consider that the reasonable and proportionate figure is £15,000 in total, instead of £20,000 as proposed. Added to the £25,000 for the solicitors, and the £940 for court fees and the cost of the transcript, that makes a total of £40,940. One half of that is £20,470 (no VAT). Accordingly, that is the figure which I will insert in my order.