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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (Ch D)
[2021] EWHC 448 (Ch)

No. CH-2020-000166

Rolls Building
7 Rolls Building
Fetter Lane
London
EC4A 1NL

Wednesday, 10 February 2021

Before:

MR JUSTICE MILES

B e t w e e n :

(1) OWEN OYSTON
(2) BLACKPOOL FOOTBALL CLUB
(PROPERTIES) LIMITED

Claimants/Appellants

- and -

(1) DAVID RUBIN
(2) PAUL COOPER

Defendants/Respondents

Matthew Collings QC (instructed by Howarth Holt Bell) appeared on behalf of the Appellants.

Mark Philips QC and Madeleine Jones (instructed by Stephenson Harwood) appeared on behalf of the Respondents.

J U D G M E N T

MR JUSTICE MILES:

1 This is an appeal from the order of Master Clark, dated 19 June 2020 ("the Clark order"). That order concerned the listing of the trial a claim made by the appellants ("the Part 8 claim") by which they challenged the respondents' final account in a receivership over certain assets of the appellants by way of equitable execution of a judgment debt. The Master decided that the trial should be heard by Marcus Smith J, together with an application brought by the respondents. Marcus Smith J had already had extensive involvement in previous hearings relating, first, to an underlying petition which had given rise to the judgment debt and, secondly, to the receivership by way of execution of that judgment debt.

2 Before turning to the grounds of appeal, I should set out the procedural background. In this regard, I draw on the parties' helpful skeleton arguments and oral submissions.

3 Mr Oyston, the first appellant, was formerly the majority owner of Blackpool Football Club Limited, which operated Blackpool Football Club ("Blackpool FC"). The second appellant is a company majority owned by Mr Oyston, which held various property investments, including title to a hotel within Blackpool FC's stadium, leased and operated by Travelodge ("the Travelodge"), and to various residential properties in Blackpool.

4 The receivers were appointed in respect of a judgment debt of £31million odd, payable by the appellants, which arose after a ten day unfair prejudice trial presided over by Marcus Smith J in 2017. By an order of 28 May 2018 Marcus Smith J reserved all matters relating to the enforcement of the judgment to himself.

5 Marcus Smith J appointed the receivers on 13 February 2019 after a day-long hearing. The appointment was over certain assets belonging to the first appellant and over his shares in the second appellant. As I have said, the receivership was by way of execution of the judgment debt.

6 In all Marcus Smith J has presided over some ten hearings and thirty applications relating to the receivership and enforcement of the judgment debt. Under the receivership order, the receivers were required to provide regular reports to the court. This has been done. The reports set out in detail the steps taken in the receivership. The reports record that the receivership has been, in many ways, a complex and difficult one.

7 On 17 December 2019 Marcus Smith J conditionally discharged the receivers. The background to that was as follows. The parties to the petition proceedings had reached a settlement and applied for the discharge of the receivership. However, there remained questions of sums which the receivers said were outstanding in respect of their remuneration and expenses. Amongst other things the Judge ordered that there should be a lien over the Travelodge. That was not opposed by the appellants. He also ordered that there should be a timetable for the notification of any claims by the appellants against the receivers, in particular in relation to the receivers' final accounts. He ordered (by para 6) that any such claim had to be brought by the end of January 2020. In the event that such a claim was brought the receivers would not be released from liability in respect of the matters raised in their final account.

8 On 20 December 2019 – a few days later – the receivers submitted their final account. They claim that they are out of pocket by some £650,000 in respect of remuneration and expenses. As I have said, they have a lien over the Travelodge, but this is not enforceable until the final account is settled.

9 On 30 January 2020 the claimants issued a Part 8 claim challenging the receivers' final account. That claim, in terms, refers to the provisions of the order of 20 December 2019. As a result of those proceedings being brought the receivers have not received their discharge and the receivership may be regarded as continuing for the purposes of settling the final account.

10 The solicitors for the receivers, Stephenson Harwood, wrote to the clerk to Marcus Smith J, copying the appellants' solicitors, on 7 February 2020, explaining that the Part 8 claim had been issued and asking that it be determined by Marcus Smith J. His clerk responded on 10 February 2020, saying this:

> "Subject to any point Mr Oyston may have and subject to a point below, the Judge is more than happy to deal with the matter as you suggest. The one point that the Judge feels obliged to point out to the parties is that until the end of June/early July his diary is very full and if the parties were to seek a hearing of any substance before that time, there might be difficulties which might make it more appropriate to release the matter to another judge.
>
> The Judge suggests, again, subject to anything Mr Oyston may wish to say, that the parties proceed on the basis that the matter will be dealt with by him, given the knowledge he has already acquired, but that the parties and the Judge will deal with any diary issues if and when they arise."

11 On 11 February 2020 the appellants' solicitors wrote to the court indicating that they objected to the claim being heard by Marcus Smith J. They said that accounts are normally assigned to masters, that the Part 8 claim raised discrete claims which were separate from the receivership proceedings, and that, in the normal way, the matter should be heard by a master.

12 On 12 February 2020, in the light of that communication, Marcus Smith J stated that if the respondents wished to make an application for allocation to him, they would need to make a formal application. The respondents therefore made such an application within the Part 8 proceedings on 30 March 2020. The parties served evidence on that application. Mr Frith, for the respondents, explained that they intended to seek declaratory relief concerning a number of issues about the meaning and effect of the receivership order and that this would be relevant to the challenges to the final account made in the Part 8 claim.

13 The transfer application was dealt with on the papers by order of Deputy Master Arkush on 12 May 2020. He refused the transfer application and ordered that the Part 8 claim be listed for a disposal hearing before a master on the first available date after 1 June 2020 and required the parties to give their dates to avoid for June, July and August 2020.

14 The order referred to the witness statement of Mr Bell for the appellants, but not the statement of Mr Frith for the respondents. However, it seems to me clear that he must have considered the witness statement of Mr Frith, as the application, which he did refer to in the recitals to his order, referred to Mr Frith's statement and would have made little sense without it.

15 The order was sent to the parties on 27 May 2020. On 28 May 2020 Stephenson Harwood wrote to the court confirming receipt of the order the previous day and gave their counsel's dates to avoid. The letter also attached the receivers' issued application for declaratory relief, which they had filed within the main petition proceedings on the same date. That application was made under the liberty to apply provision of the receivership order. It seeks

declarations about the meaning and effect of a number of parts of the receivership order relating to the receivers' entitlement to fees.

16 The respondents say that the declarations made on that application will affect the relief to which the appellants are entitled under the Part 8 claim. The declaration application specifies Marcus Smith J as the judge.

17 In the letter of 28 May 2020 Stephenson Harwood also proposed that it would be sensible for the declaration application to be dealt with before the hearing of the Part 8 claim. They did not, however, formally apply for a stay.

18 Also on 28 May 2020 the respondents' solicitors wrote to the clerk to Marcus Smith J referring to and enclosing a copy of the declaration application and making the same proposal that it should be dealt with by the judge before the hearing of the Part 8 claim. Again no formal application was made for a stay of the Part 8 claim.

19 On 3 June 2020 Master Clark emailed the parties to say that the question of reserving the Part 8 claim to Marcus Smith J should be revisited in the light of the respondents' declaration application. She said this:

> "In the light of the defendants' application in the receivership proceedings (CR-2015-006989) it seems to me that the question of whether Mr Justice Marcus Smith should determine this Part 8 claim should be revisited. I have made enquiries as to the Judge's availability and he is likely to be able to hear the claim and the associated directions application in July. August is judicial vacation and I have not made enquiries as to his availability then. I propose, therefore, a short remote directions hearing to decide whether to direct that the claim is listed before the Judge to be heard with the defendants' directions application. The parties should send their joint availability for the hearing."

20 As a result a directions hearing took place on 15 June 2020. On 19 June 2020 the Master gave her decision. She decided that the Part 8 claim should be heard by Marcus Smith J alongside the declaration application. She refused permission to appeal. Subsequently, she sought and obtained the approval of the Chancellor for the docketing of the Part 8 claim to Marcus Smith J.

21 Falk J refused permission to appeal on the papers. The appellants renewed their application and after an *ex parte* oral hearing Adam Johnson J granted permission.

22 It is common ground that the Master took the decision to reconsider the order of the Deputy Master of her own motion. In her judgment, she considered the question whether it was open to her to revisit the order of the Deputy Master. She referred to CPR 3.1(7) and directed herself at [16] by reference to the well-known case of *Tibbles v SIG PLC* [2012] EWCA Civ 518. In that case, at [39(ii)], the Court of Appeal said, without giving an exhaustive definition of the circumstances in which a principled exercise of the discretion may arise, that the discretion under CPR 3.1(7) may normally only be exercised where either there has been a material change in circumstances since the order was made, or the facts on which the original decision was made were misstated or misunderstood by the court. On the facts of *Tibbles* itself, the Court of Appeal also emphasised that there had been a long delay between the two orders in question and that the revocation of the earlier order was plainly prejudicial to the defendant.

23 Having directed herself by reference to those principles, the Master then dealt with the question of varying the order of the Deputy Master under CPR 3.1(7) in two stages. First, she considered whether there had been a material change in circumstances. She then considered whether it was right in all the circumstances for her to exercise her discretion to vary the order. She held that there had been three material changes of circumstances: (1) the declaration application had been issued since the decision of the Deputy Master; (2) the Judge's availability in July 2020 had become clear; and (3) as a result of a change of their counsel, the respondents were now able to advance dates for the hearing in July 2020. The Master rejected submissions that changes in the Judge's and counsel's availability were not material and also that the declaration application was an abuse of process or should not otherwise be taken into account.

24 The Master further held that it would be right to exercise her discretion to vary the Deputy Master's order because, as she saw it, Marcus Smith J was best placed to hear the claim. She also considered that there was sufficient overlap between the two claims that it would be appropriate for them to be heard together. The Part 8 claim, she said, raised questions of construction of the receivership order and questions of the reasonableness and proportionality of the receivers' fees and expenses, and that Marcus Smith J, with his detailed knowledge of the proceedings, was best placed to consider these issues.

25 The appellants say in their grounds of appeal (1) that there were no circumstances justifying the exercise of the discretion under CPR 3.1(7) (2) it was not, in all the circumstances, right to exercise the discretion; and (3) there is no jurisdiction to allocate the Part 8 claim to a specific High Court judge.

26 At the hearing of the appeal counsel for the appellants made it clear that his appeal was really based on one point, which was whether the Master had jurisdiction properly to revisit the order of the Deputy Master. He said that there was no justification for upsetting that decision and that, therefore, the matter should be heard by a master, as the Deputy Master had ordered. He accepted that it would, as he put it, be very difficult for the appellants to succeed on the other grounds, which essentially involved a challenge to a case management decision and the exercise of an evaluative discretion by the Master.

27 Before turning to the detailed arguments, it seems to me there is a key overarching consideration. In managing cases, the court must take account of the use of judicial resources and the needs of all litigants, not merely those before the court. The efficient allocation of judges or masters to cases is part of effective and fair administration of justice. The court itself has a strong interest in allocating resources efficiently. It must, of course, do so fairly and avoid unnecessary chopping and changing, but if a judge or master has been involved in a case it will often make sense to allocate further aspects of that case to him or her. The Master said that the decision in the present case is on the cusp of case management and court administration and I consider that is apt. However, in my view, it is particularly important here to emphasise the court administration aspect. The court has its own interest in the efficient use of judicial resources and is entitled to make its decisions about how best to deploy them.

28 With this in mind, I turn to the issue raised by the appellants: did the Master have power to set aside the order of the Deputy Master?

29 The appellants submit that the Master was wrong to find that the change in the availability of the receivers' counsel or the Judge were material; and was also wrong to take the declaration application into account as a material change in circumstances, because either it

was not truly new or because it was something that the respondents had themselves brought about and that it was therefore abusive for the appellants to rely on it.

30 The case of *Tibbles* shows that the jurisdiction to reopen orders is highly sensitive to the facts of the particular case. It will depend on the nature of the relevant order and what has happened since the order was made. An assessment of what constitutes a sufficient change of circumstances has to be considered in that context, so that, for example, where parties have relied on an order of the court and it has been in place for some time, that may be highly material. In the present case, nothing material had happened as a result of the Deputy Master's order.

31 One of the changes identified by the Master concerned changes in the availability of the respondents' counsel. The respondents had previously supplied their dates to avoid to the court on 30 March. Mr Bell, the solicitor for the appellants, had complained about their limited availability in his witness statement on 1 April. The Deputy Master's order of 12 May ordered that the Part 8 claim should be listed before a master on the first available date on or after 1 June and that the parties should give their dates to avoid for June, July and August 2020. After that order was notified to them, the receivers gave their dates, including the dates when counsel was not available. At that stage, their instructed junior counsel was unavailable in June and July 2020. By the time of the hearing on 15 June 2020, the receivers had instructed alternative junior counsel, who also now had availability for dates in June, July and August 2020.

32 The appellants suggest that this was not a material change of circumstances, or alternatively that it was one that should be ignored because it was in the respondents' own control. The Master rejected that submission and I consider that she was entitled to do so. The decision by the respondents to change their counsel was a reasonable one in order to enable the respondents to find an earlier date for the hearing and it cannot be regarded as an abuse. As I have said, in assessing whether a change of circumstances is sufficient to engage the jurisdiction, it is important to consider it in context. Here, nothing had happened which might have given rise to a claim that either party had been prejudiced by reliance on the order of the Deputy Master.

33 The Master also relied on what she thought was a change in the circumstances of the availability of the Judge. It was clear from her message of 3 June that she had been in contact with the Judge who had indicated that he could hear the Part 8 claim and the declaration application in July 2020. The appellants submit that the Judge's availability was not a material change, because the Judge himself had given a tentative indication that he had availability in June and July in his communication of 10 February 2020. However, it is not clear that the details of his availability were known in May 2020, when the Deputy Master made his order. There was no further material before him at that stage and, of course, things will have moved on since February 2020. It seems to me that the Master was entitled to treat the Judge's confirmation that he was available in 2020 was a change in circumstances and was, again, a sufficient change to engage the jurisdiction.

34 Perhaps most significantly the respondents relied on a third change namely the issue of the declaration application. The appellants say that this is not a material change in circumstances, essentially for two reasons: first, they say that it was already trailed or prefigured in the evidence before the Deputy Master in May 2020; and, second, in the alternative that it was a step taken by the appellants themselves and that, on the authorities, a step of that kind, when deployed to seek to set aside an earlier order, is an abuse of process. They say that on the present facts what the respondents did would amount to an abuse of process.

35 As to the first of these points, while the possibility of this application had been trailed in May 2020, it had not in fact been made by the end of May 2020. It was then made and the court had to decide how best to deploy its resources to determine it. That is a change of circumstances. The appellant says that the change was not material because the issues raised by the declaration application are duplicative of those in the Part 8 claim. However, it seems to me that the declaration application, while dealing with some overlapping matters, also has a broader reach or scope. The Part 8 claim focuses on whether amounts were in fact reasonable and proportionate in all the circumstances and not, at least in all respects, whether they are, in principle, capable of being claimed. Moreover he declaration application seeks relief not covered by the terms of the Part 8 claim.

36 As to the suggestion that the making of a declaration application was abusive, the appellants rely on some comments made in the case of *JSC VTB Bank v Skurikhin* [2020] EWCA Civ 1337. That was a case in which a party sought to reopen an earlier application by relying on its own subsequent conduct. There was a finding of the first instance judge that the relevant acts had been undertaken for the purpose of enabling an application to be made to discharge an earlier order. There was a submission that there was a hard edged rule that a party can never rely on a change of circumstances it itself has brought about in order to justify an application under rule 3.1(7). The Court of Appeal rejected that submission and at [53] Phillips LJ said this:

> 'However, I do not consider that the Judge's broad proposition at [161] of her judgment amounts to a new or freestanding aspect of abuse, but rather a recognition that such conduct might well fall within one or more of the "broad rubrics" referred to above. Both of the (relatively extreme) examples above of second applications, based on changed circumstances brought about by the losing party, reveal aspects of *Henderson v Henderson* abuse and, if permitted, would plainly bring the administration of justice into disrepute and would be manifestly unfair to the other party. Less extreme examples might or might not fall foul of one or more of those aspects. I certainly would not suggest that a losing party can never make a second application based on a material change of circumstances within its control without that second application constituting an abuse. That would be to adopt the sort of dogmatic approach deprecated by Lord Bingham in *Johnson.*'

37 That shows that the question whether conduct is abusive is governed by well-known general principles (as illustrated by the cases cited). Putting things broadly, the relevant conduct must be manifestly unfair or bring the administration of justice into disrepute among right thinking people. The *VTB* case also emphasises that the question whether conduct is abusive is intensely fact-sensitive (see [49]) and that in determining whether proceedings were an abuse of process, an appellate court would always give considerable weight to the opinion of the judge below (see [50]). Phillips LJ also emphasised at [54] that a party's purpose in taking action may often be highly relevant to the question whether the act in question is abusive.

38 The respondents say that the suggestion that they have brought about the change of circumstances in an abusive way is misconceived. They point out in the *VTB* case a party itself had taken an act with the actual purpose of making a further application to undo an earlier order of the court and had then made that application.

39 By contrast, they say, in the present case Master Clark listed the 15 June directions hearing of her own motion. When they issued the declaration application, the receivers did not seek

to reopen the Deputy Master's ruling. They accepted that order and complied with it by providing dates when they were available. Although they informally suggested a case management stay of the Deputy Master's decision, they did not in any way seek to reopen it or suggest that the case should now be allocated to Marcus Smith J. In other words, they were prepared to live with the order. It was the court that decided that the Deputy Master's decision should be revisited, given the changed circumstances. That was a decision made by the court based on concerns about the allocation of judicial resources. Master Clark was naturally concerned that if the declarations application was going to be heard by Marcus Smith J it would be a waste of the court's resources for the Part 8 claim to be heard by another tribunal. She was also concerned that there was sufficient overlap between the two cases that it would make obvious sense for them both to be heard by the same tribunal. The respondents say that the policy behind the kind of abuse identified in *VTB* is to prevent parties from making vexatious applications and thereby forcing their opponents to meet the same points more than once.

40 I agree with the respondents' submissions. There is no justification, it seems to me, for a rule which restricts the court's own power and duty to manage cases efficiently by prohibiting it from taking into account new circumstances brought about in one way or another by one of the parties to the litigation. I think this is particularly so in the context of judicial allocation decisions. The court cannot properly be constrained from taking into account changed circumstances, including those brought about by the parties in revisiting its own decisions. That would, it seems to me, undermine the overriding objective and, in particular, the requirement in that objective that the court should allocate resources efficiently and take account of the interests of all court users.

41 I do not see how the act of the respondents in this case in issuing the application can possibly be regarded as an abuse. They did not do that with the purpose of upsetting the existing order. In any event, the Court of Appeal in *VTB* at [53] made clear that a party's reliance on changes of circumstances which it itself has brought about is not necessarily abusive. It may or may not be. But the question is whether what has happened is manifestly unfair or brings the administration of justice into disrepute. Given that the court itself required the question to be revisited at a directions hearing, I do not see how it can possibly be said that what the respondents did at that hearing could be considered to be either unfair or to bring the administration of justice into disrepute. I, therefore, reject any suggestion that their conduct was abusive.

42 For these reasons the first ground of appeal is dismissed. As the appellants realistically did not press the other grounds of appeal, that is sufficient to conclude the appeal. However, in any case, I am satisfied that, on the exercise of her discretion, the Master's decision was not only within the reasonable range, but was right. Marcus Smith J has been involved in the receivership aspects of this case. There are important questions about the interpretation and effect of the existing orders of the court. There are also questions of reasonableness in relation to expenses and remuneration, which will depend on a review of the history. He is eminently well placed to deal with the issues. I also consider that it is obvious that the two sets of proceedings should be determined together.

43 I add this. I have addressed the question on the footing that a change of circumstances was required to justify Master Clarke revisiting the allocation of the case to a master and making the revised allocation order that she did. But I doubt that in a case of this kind a material change of circumstances was in fact necessary to arm the court with the power to make a revised decision of the kind it did. I have already explained that the court has its own interest in the allocation of judicial resources. To my mind, it is always open to the court, of its own motion, to make such decisions, even where this may involve a change to an earlier

order. An example of this is a decision of the court to docket a case to a particular judge. Indeed, shortly after the Master's order the Chancellor docketed this case to Marcus Smith J. There would be nothing, it seems to me, in the order of the Deputy Master that could have prevented that happening. As the Court of Appeal explained in *Tibbles*, the general rules about changes of circumstances (or decisions being made on the basis of a misunderstanding or mistake) should not be regarded as rigid tramlines and, in the end, the governing question is whether it is just to revisit an earlier decision. In making a decision about the allocation of judicial resources, I do not see why the court should be stuck in the rails of earlier decisions. Of course, if new decision might involve some material prejudice to the parties, that is something that would have to be given full and proper weight, but there was nothing of that kind here.

44 For these reasons, the appeal is dismissed.

45 I will now deal with the question of costs. There is no dispute that an order for costs should be made in favour of the respondents. The respondents seek their costs on the indemnity basis. The principles on which lies the discretion to order costs on that basis are well-known. The ultimate question is whether there has been such conduct outside the norm as to justify an award of indemnity costs; and normally this is taken to require some conduct which is unreasonable to a high degree.

46 The respondents rely on four matters: they say first that there were very low or limited prospects of success on the appeal; second, they complain about the conduct of the permission to appeal hearing; third, they say that everything that has happened since the decision of the Master has been calculated to cause delay; and, fourth, they rely on what they say were serious allegations made by the appellants.

47 Treating these in turn, the first is the prospects of the appeal. The appellants say that the point was a highly technical one, that ultimately this was a matter to do with case management and the allocation of court resources and, what is more, the Chancellor approved the docketing to Marcus Smith J.

48 I do consider that the appeal was the extreme low end of the range in terms of its merits and prospects of success. The appellants say that they limited the argument to the threshold question of CPR 3.1(7). However that only arose at the hearing. When the Judge gave permission to appeal it was on all grounds and those grounds included an root and branch challenge to the Master's exercise of her discretion. There was also a suggestion in the appellants' skeleton argument that, in some way, Marcus Smith J might not be appropriate to hear this case, on the basis of an indication he gave at a hearing in December 2019. An analogy was drawn with cases on unconscious bias. That point was (rightly) not pursued at the hearing.

49 The second point, about the conduct of the permission hearing, concerns statements made by counsel in the course of that hearing. It is suggested that counsel did not fairly and fully explain the extent of the involvement of Marcus Smith J in the earlier proceedings and their importance to the current cases. I do not think there is much in this point. Adam Johnson J reached his decision, as I read it, on the basis that he thought there was a possible argument based on the *VTB* case. I have dismissed that argument, but that seems to me to be the basis on which he was persuaded to grant permission to appeal.

50 The third point is delay. I do think there is real force in this point. It seems to me that once the Master had made her decision, there was no reason in truth for the appellants to appeal

and do anything other than get on with the proceedings before Marcus Smith J. They say that they had no objection to him as a judge, albeit, as I have said, they hinted in counsel's skeleton argument that he was somehow inappropriate. That was an entirely unjustified suggestion, but it has been disavowed in any case. Counsel for the appellants said that they thought that the matter raised by their Part 8 claim was better dealt with by a master. I find that a wholly farfetched submission. A judge is quite capable of dealing with these matters, particularly a judge who has had the amount of involvement that Marcus Smith J has. It was obvious that appealing would simply serve to delay matters and that is indeed what has happened. Had the appellants just got on with it, this matter would have been over by now. It is a matter for concern that there remain disputed amounts, including sums payable to third parties, and that there has been no resolution of those matters.

51 As to the fourth point, the appellants accept that they did indeed make serious allegations against the respondents in relation to steps taken by the respondents, including that the respondents were guilty of an abuse of process. I have rejected those suggestions.

52 I also need to stand back and ask whether this is a case which, on the test I have mentioned, justifies indemnity costs. I am satisfied that it does. It seems to me that, taken together, these various factors take the case sufficiently outside the norm so as to justify an award of indemnity costs.

53 I then turn to the statement of costs. The respondents ask me to summarily assess the costs. The appellants oppose this and suggest that the court should instead make an order for a detailed assessment, coupled with a payment on account. I will summarily assess the costs. It seems to me preferable, if possible, to avoid the further costs of assessment proceedings. This is tooth and nail litigation. There is every chance that if I order a detailed assessment there will be yet more litigation (with its own costs). Wherever the court feels able to do so, it should summarily assess costs. I also consider that the information I have been provided is sufficient to enable me to do so.

54 The overall amount claimed is some £57,840 odd, together with VAT, giving a grand total of £69,360 odd. About £25,000 of the £57,000 consists of the fees of counsel. £31,000 consists of solicitors' fees and there are other costs and disbursements coming to about £1,600 or so. The first point that is taken by the appellants is that the hourly rates are excessive. They point out that the proposed hourly rates in certain recent consultation papers suggest rates for City of London firms of £512 for a Grade A fee earner, down to £126 per hour for a Grade D fee earner. The court does not necessarily take the guideline rates as binding. It has to consider the overall complexity of the case and whether specialist solicitors are required. It seems to me that this application is in the context of much larger litigation in which it has been appropriate for the receivers to instruct specialist solicitors, and rates of the kinds sought here seem to me not to be unreasonable, which is the test to apply on an indemnity costs assessment.

55 The next point is the time spent on the preparation of documents, or "work done on documents", as it is described. Detailed submissions have been made about some of the entries in the schedule to the costs schedule, which sets out the work done on documents. Most of the focus was on points 2, 3 and 4. I consider that there is some merit in some of the concerns raised by the appellants in relation to some of these matters. I do not fully understand why all of the time that has been attributed to paragraph 2 of that schedule has been spent. It seems to me that, looking at things in the round, it would be appropriate to reduce that number. Equally, the overall number of hours spent in relation to the respondents' skeleton argument seems to me to be somewhat on the high side and may be considered somewhat unreasonable. I also have some concerns about the quality of the

bundles which were put before the court, which are covered, as far as I can understand it, in items 3 and 4. Looking at matters overall, it seems to me that a deduction of £5,000 in relation to the schedule of work done on documents would be appropriate. There is also some criticism of the number of hours spent on other matters, including, for example, attendance at the hearing. However, the length of time actually spent at the hearing is about twice that contained in the schedule and I do not think in the circumstances any deduction is appropriate there. I do not think that counsel's fees can be regarded as unreasonable or that the other disbursements are unreasonable in a case of this kind.

56 Having looked at all of those matters, I think it is appropriate to assess the costs at the sum of £52,840 plus VAT. I will order those costs to be paid within 14 days, which is the usual position. Although the appellants say that they would like longer, that is true of anyone and no reasons were given as to why the usual rule of 14 days should not apply.

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