Neutral Citation Number: [2024] EWHC 325 (Ch)

Case No: PT-2023-000695

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16 February 2024

Before :

Andrew Twigger K.C. sitting as a Deputy Judge of the High Court

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Between :

(1) Andrew William Warner Wootton **(2) Sherwood Oak Properties Limited**	**Claimants**
- and -	
Tracy Jane Wootton	**First Defendant**
(1) James Thomas Blackwell **(2) Rebecca Louise Wootton**	**Second Defendants**

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Mr Justin Perring (instructed as direct access counsel) for the **Claimants**
Mr John Carl Townsend (instructed by **Sperrin Law**) for the **Second Defendants**

Written Submissions

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APPROVED JUDGMENT

Mr Andrew Twigger K.C. :

1. This is my ruling on the summary assessment of costs pursuant to my order of 26 January 2024.

2. I have read the parties' written submissions and carefully considered each of the items of costs listed on D2's statement of costs. In the exercise of my discretion, I have summarily assessed the costs at £28,000, including VAT. My reasons, in brief, are as follows.

3. It was reasonable and proportionate for D2 to instruct a London solicitor because Cs had issued the claim in London and applied for the injunction in the urgent applications list in the High Court in London, using London counsel. It was appropriate for D2 to instruct a solicitor with experience of such applications. Submissions concerning D1's alleged dissatisfaction with her former solicitors are irrelevant to D2's costs and I cannot, and do not, make any findings about that issue. Whilst it was obviously appropriate for these proceedings previously to have been transferred to Birmingham, I have not heard argument about whether, given what subsequently occurred, the proceedings should again be transferred to Birmingham, and I make no comment about it.

4. It was reasonable and proportionate for a Grade A fee earner to carry out the relevant work. The application was urgent and sought relief which would have had significant consequences for D2, had it been granted. That merited a solicitor with substantial experience.

5. By my calculation, Mr Jones did 19.8 hours work (including emails but excluding attendance at the hearing/conferences). Looked at overall, this is a

reasonable and proportionate amount of work to respond to such an application, in my experience, even though D2's solicitors had been instructed prior to the application being made. Especially given the serious nature of the relief sought, it was necessary for Mr Jones to read the application and supporting evidence carefully, even if he had already seen much of it before. The time claimed for that task is reasonable and proportionate. The evidence in response had to be prepared in haste and was of assistance to the court. The history required explanation and each of the allegations made by Cs needed a response. In the circumstances, the length and content of the evidence, and the time taken to prepare it, was reasonable and proportionate. The telephone and email attendances are reasonable and proportionate, particularly given the work required to draft the evidence in response. It was reasonable and proportionate for Ms Chandler, a relatively junior lawyer, to spend 2.3 hours preparing the bundle. As the solicitor who had dealt with the application and prepared the evidence, it was reasonable and proportionate for Mr Jones to attend the hearing.

6. This was not, however, the kind of heavy commercial and corporate work which justifies London 1 rates. In my judgment, reasonable rates would have been £398 p.h. for Mr Jones's work, which is the London 2 rate for a Grade A fee earner, and £148 p.h. for Ms Chandler's work (Grade D).

7. I have not made, and do not make, any findings about the positions taken by the parties in the proceedings more widely. Whether the executors have acted appropriately or neutrally, which parties own which land, and whether any party is in possession of, or has permission to enter, or has traded on, any land are all matters for trial in due course. I do not consider the mere fact that D2 are the

personal representatives of the estate has any impact on the costs which it was reasonable for them to incur. An injunction has serious consequences for any individual and it is unrealistic for Cs to say that the application ought not to have had any importance to D2 because they are personal representatives.

8. There was nothing about D2's conduct of the application itself which was unreasonable. It was not unreasonable for D2 not to give undertakings in the terms sought, given that the application for an injunction was dismissed. The late service of D2's evidence was unfortunate, but understandable, given that there were only four working days between service of the application and the hearing. I cannot infer that this was tactical or non-cooperative.

9. Despite D2 urging me to take into account various allegations concerning C's conduct, such as the tone and content of C's correspondence or the nature of the applications made against D1, I do not consider it would be proportionate for me to attempt to reach conclusions about these matters, or that it would ultimately be of any real assistance in deciding the appropriate amount of costs, given the conclusions I have already reached. I have taken no account of the limited references to correspondence concerning mediation. I am not in a position to, and do not, make any findings about whether any such correspondence was privileged or whether any privilege has been breached.

10. Given the limited time between service of the application and the hearing, it was not unreasonable for D2 not to have served a statement of costs on time. My recollection is that, when it was proposed at the hearing that D2 serve a statement of costs out of time, Cs did not object.

11. Mr Jones spent a total of 25.8 hours, which at £398 p.h. = £10,268.40. Ms Chandler spent 2.5 hours, which at £148 p.h. = £370. Added together = £10,638.40. Adding VAT at 20% gives £12,766.08.

12. In my experience, counsel's brief fee of £12,500 plus VAT (= £15,000) is reasonable and proportionate for an urgent hearing in the High Court lasting the best part of a day, with a substantial amount of documentary material to read.

13. For these reasons, in the exercise of my discretion I assess the overall costs as £10,638.40 + £12,500 = £23,138.40 plus VAT = £27,766.08, which I have rounded up to £28,000. In my judgment, this is a reasonable and proportionate sum overall for this injunction application. I have not added any additional sum to cover D2's costs of responding to Cs' lengthy written submissions concerning this summary assessment, but I bear in mind that there will have been some additional costs, when concluding that £28,000 is reasonable and proportionate overall.

14. So far as Cs' point based on Garbutt v Edwards [2005] EWCA Civ 1206 is concerned, it would have been difficult, if not impossible, for D2's solicitors to provide their clients in advance with an accurate estimate of the costs which might be incurred in relation to an injunction application which had not yet been made, and without knowing what any evidence in support might say. I do not consider that such an estimate, in the unlikely event that one could have been given, would have had a material effect on the costs ultimately claimed.