



Neutral Citation Number: [2023] EWHC [110] (Comm)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 27/01/2023

Before :

MR ADRIAN BELTRAMI KC
Sitting as a Judge of the High Court

Between :

Case No: CL-2019-000662

(1) GATTAZ PROPERTY LIMITED **Claimant**
(2) FORTIMAT PROPERTIES S.A.

- and -

VERSANT DEVELOPMENTS & HOMES LTD & **Defendant**
others

- AND -

Between :

Case No: CL-2021-000710

FORTIMAT PROPERTIES S.A. **Claimant**

- and -

PINSENT MASONS LLP **Defendant**

Stuart Cribb instructed by **Wallace LLP** for the **Claimants** in Claim No. **CL-2019-000662**
(the **Development Claim**) and in Claim No. **CL-2021-000710** (the **Negligence claim**)

Simon Davenport KC and **Rowan Pennington-Benton** instructed by **Ince Gordon Dadds**
LLP for the **4th, 6th, 9th and 10th Defendants** in the **Development Claim** (the **IGD**
Defendants)

Mr Ian Penfold was not instructed and appeared in person

Simon Goldstone instructed by **Kennedys Law LLP** for the **Defendant** in the **Negligence claim (PM)**

Hearing dates: 14 December 2022
Written submissions provided 6, 13 and 23 January 2023

JUDGMENT

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This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 27th January 2023.

ADRIAN BELTRAMI KC (Sitting as a Judge of the High Court) :

1. There was insufficient time at the CCMC on 14 December 2022 to address the parties' costs schedules in detail. Furthermore, I expressed the view that the figures contained in the Claimants' costs schedules were too high and directed the provision of a single combined revised Precedent H, upon which the other parties could make submissions in writing. I have received written submissions from the Claimants, the IGD Defendants and PM. Regrettably, the revised Precedent H supplied by the Claimants contained arithmetical errors. Whilst these have since been corrected, through the second witness statement of Oliver Goldman, this has meant that the responses from the IGD Defendants and from PM were directed to a schedule which has now been superseded. This has led to unnecessary complication. Nevertheless, I feel able to deal with these matters on paper, rather than convene a further hearing, and am sure that it is in the parties' interests that I do so. This judgment sets out my brief reasons for the conclusions I have reached.

2. I record that I have received no Precedent H from Mr Penfold.

Form of order

3. PM suggests that:

- a. The order should record that the Claimants' costs budget reflects the combined costs of two sets of proceedings and is not to be taken as the starting point for the assessment of costs either of the Development Claim or the Negligence Claim.
- b. The order should also record that, in the event the Claimants succeed in one or more of the claims, the combined costs will not be recoverable in total against each Defendant, and that the trial judge will be required to perform an allocation.
- c. The order should direct the Claimants, in the event of settlement of either claim, to serve an updated Precedent H pursuant to CPR 3.15A(1).

4. I agree that the order should record that the costs budget which I approve is the combined budget for the two sets of proceedings, in circumstances where the claims are to be case managed together and there is to be a joint trial. Beyond that, I do not consider it appropriate to add any gloss to that fact, to make any directions to the trial judge, or to cater now for the possibility of contingencies or obligations which may or may not arise under the CPR.

Claimants' incurred costs

5. I am invited by the IGD Defendants and by PM to comment adversely on the level of the Claimants' incurred costs, these now amounting to £676,748.58. At the time of the hearing, such costs did strike me as high and potentially disproportionate when set against the value of the claims. The Claimants seek to justify the figures by relying, principally, on the (a) the investigation work which was conducted during this phase (b) the complexity of the claims advanced; and (c) the evolution of the fraud claims

during the course of the phase, leading to the need to make substantial amendments to the Particulars of Claim.

6. Whilst I continue to harbour impressionistic doubts as to the reasonableness and proportionality of the incurred sums, I have come to the conclusion that no adverse comment should be recorded in the order. In my view, I am not in a position to make an informed judgment, given the limited access that I have had to the underlying materials and the limited opportunity to explore the factors relied upon by the Claimants. These are matters which will no doubt be considered at length in a detailed assessment, if there is one. I do not believe that my more superficial impression is likely to assist that process.
7. I do agree with the suggestion that the incurred costs be listed separately, as between the two actions, even though the estimated costs will now cover both actions together.

Claimants' estimated costs

8. **Disclosure.** I allow the Claimants' total of £134,677.50. I do not consider the profit costs figure of £83,677.50 to be unreasonable or disproportionate. The parties are at odds over the suggested £45,000 documentary platform and translation costs. I am not able to resolve that dispute and so I allow that sum in the budget. If, of course, any part of the money is not spent, this will drop out of the budget.
9. **Witness statements.** I will allow the Claimants' total of £115,955.50. I do not consider the profit costs figure of £75,955.50 to be unreasonable or disproportionate, given the likely scope of witness evidence, and I note that this figure is agreed by the IGD Defendants, though not by PM. Again, I am unable to resolve the dispute about translation costs.
10. **PTR.** The Claimants now claim £43,400, a small increase over the figure of £41,943.50 in the revised Precedent H. That lower figure has been agreed by the IGD Defendants, though not by PM. The bulk of the figure is comprised of the fees of Leading and Junior Counsel and I accept that it may be necessary for both to attend. I do not consider the figures to be unreasonable or disproportionate and I allow the total of £43,400.
11. **Trial preparation and trial.** It is sensible to take these two phases together. The Claimants claim a total of £765,072.50. The IGD Defendants offer £450,000 and PM offers £539,485. Viewing the matter in the round, I am of view that the Claimants' figures are still too high, in the context of claims for £3 million or so and which are now listed for trial with an estimate of 12 days inclusive of reading time. I bear in mind that there are allegations of fraud and that these will no doubt require careful exposition at trial and I note that the profits costs have been pared back from the revised budget. It is also to be remembered that the Claimants will be contesting both actions, whereas the IGD Defendants and PM will be focussed on the separate claims which they are each facing. Nevertheless, I have come to the conclusion that in the interests of proportionality, the overall figure for these two phases should be reduced to £700,000. I leave it to the Claimants to produce a revised allocation.
12. **ADR and security for costs.** I allow the Claimants' figures of £25,000 for ADR and of £25,500 for security for costs.

Defendants' costs

13. The proposed budget of the IGD Defendants is lower than that of the Claimants and the proposed budget of PM is substantially lower. As between the IGD Defendants and PM, this is as I would expect. Even apart from the issue of panel rates, I anticipate that the claim against the IGD Defendants is more wide-ranging and that its defence will require a greater workload. As for the budgets, the Claimants seek some relatively minor deductions from the IGD Defendants' budget and agree all or at least the majority of the PM budget.
14. I do not propose to make any further deductions from the Defendants' budgets, with the result that they should stand as proposed or agreed. I have applied the same broad brush approach to the Defendants' budgets as to the Claimants' and am satisfied that the amounts set out are neither unreasonable nor disproportionate.

Costs of the further exercise

15. The IGD Defendants and PM claim the costs incurred in dealing with and responding to the Claimants' revised Precedent H. I agree that they should be entitled to those costs. The further exercise has been necessary because the figures in the Claimants' original budgets were, in my judgment, far too high. That is why I directed the production of a revised Precedent H and in principle the further costs of dealing with that budget ought to be the responsibility of the Claimants. Nor is it an answer, as the Claimants suggest, that the parties ran out of time at the hearing. Time was indeed short but I could have dealt with any residual issues expeditiously after the hearing. The IGD Defendants and PM should be entitled to the wasted costs of having to respond to the revised Precedent H.
16. I accordingly award costs in favour of the IGD Defendants and PM. I summarily assess both sets of costs at £3,500 each.

Disposal

17. I approve the Claimants' revised budget, as amended by Mr Goldman, save for the reduction that I have described in the trial preparation and trial phases. The Claimants must therefore prepare a further revised Precedent H. I approve the IGD Defendants' and PM's budgets without further deduction. I award costs to the IGD Defendants and PM in the summarily assessed amounts. The parties can no doubt agree a form of order to reflect this judgment.