



Neutral Citation Number: [2022] EWHC 3154 (TCC)

Case No: HT-2019-000396

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Royal Courts of Justice
Rolls Building
London, EC4A 1NL

Date: Friday 9th December 2022

Before :

MR ROGER TER HAAR KC

Sitting as a Deputy High Court Judge

Between:

THE UNIVERSITY OF MANCHESTER

Claimant

- and -

(1) JOHN MCASLAN & PARTNERS LIMITED
(2) LAING O'ROURKE CONSTRUCTION
LIMITED

Defendants

-and-

GIFFORD GLOBAL LIMITED

Third Party

Jessica Stephens KC (instructed by **Clyde & Co LLP**) for the **Claimant**
Mark Chennells KC and Nicholas Maciolek (instructed by **DWF Law LLP**) for the **First Defendant**
Rupert Choat KC and Arthur Graham-Dixon (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Second Defendant**
Charles Pimlott (instructed by **Penningtons Manches Cooper LLP**) for the **Third Party**

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.

This judgment will be 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 Friday 9 December 2022 at 10.30am

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MR ROGER TER HAAR KC

Mr Roger ter Haar KC :

1. This matter came before me on 6 October 2022 for a Costs and Case Management Conference.
2. In the oral argument before me the time was almost entirely taken up with argument as to the conditions (if any) which should be attached to the permission to be granted to the Claimant to adduce expert evidence.
3. Because time ran out, it was agreed that I would deal with issues in respect of cost management and an issue as to disclosure on the papers.
4. This case had previously come before me on 10 October 2020 when there was a difference between the parties as to the adequacy of the particularisation of the Claimant's case. I handed down judgment on those matters on 25 November 2020 ([2020] EWHC 3198 (TCC)).
5. In respect of the matters arising in the Costs and Case Management Conference I handed down judgment on 2 November 2022. This judgment deals with costs issues, which have been dealt with on paper.
6. As the hearing before me was a Costs and Case Management Conference, the default position in accordance with the practice of this Court is that the order for costs should be that the costs be in the case.
7. Insofar as the costs of the First Defendant and Third Party are concerned, in my judgment the default position is the correct position, despite support by the First Defendant for the Second Defendant's position in respect of the Claimant's expert evidence to which I refer below. I regard the differences between the parties as to the Claimant's expert evidence to be primarily a matter between the Claimant and the Second Defendant.
8. As between those parties, the Claimant's position is that the correct order should be that:
 - (1) The Second Defendant shall pay the Claimant's costs of and incidental to the matters raised in its letter of 11 August 2022 as they relate to 'expert shopping';
 - (2) Such costs shall be subject to summary assessment by the Court;
 - (3) Such assessed sum shall be paid within 14 days of the assessment.
9. The Second Defendant resists the Claimant's submission and submits to the contrary that the ordinary order as to the costs of a Costs and Case Management Conference should be made.
10. I disagree with the Second Defendant. Its position in respect of the Claimant's expert evidence which I have dealt with at some length in the judgment which I handed down amounted to an allegation that the Claimant was engaged in an exercise of "expert shopping". I firmly rejected that suggestion.

11. I also held that the disclosure made by the Claimant's solicitors in their letter of 13 September 2022 was sufficient and appropriate to satisfy the requirements set out in the authorities when a party wishes to change experts.
12. In the event there was correspondence between the parties after that disclosure, a substantial amount of documentary evidence was placed before me, and I heard lengthy oral submissions on the matter.
13. In my judgment this is a case where there should be a departure from what I have described as the default position insofar as costs which would not otherwise have been incurred in respect of the Costs and Case Management Conference were incurred after 13 September 2022 in dealing with the Second Defendant's submission that conditions should be attached to the permission for the Claimant to adduce expert evidence.
14. The assessment of those costs cannot be made at this stage: what is necessary is to determine the costs which would have been incurred in any event in preparing for and attending the Costs and Case Management Conference and the additional costs incurred after 13 September 2022 in dealing with the Second Defendant's submission that conditions should be attached to the permission for the Claimant to adduce expert evidence.
15. Accordingly I decline to order summary assessment or an order for payment of costs on account, but I do order that the Second Defendant should pay the Claimant's costs incurred after 13 September 2022 in dealing with the Second Defendant's submission that conditions should be attached to the permission for the Claimant to adduce expert evidence.
16. Subject to the above, the draft order which has been submitted to the Court is approved.