NEUTRAL CITATION NUMBER: [2023] EWHC 294 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

No. BL-2019-002077

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 12 January 2023

Before:

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

B E T W E E N :

HARRINGTON SCOTT LIMITED

Claimant/Respondent

- and -

COUPE BRADBURY SOLICITORS LIMITED

Defendant/Applicant

MR RICHARD BOWLES (instructed by **Acuity Law Limited**) appeared on behalf of the **Claimant/Respondent**.

MS REBECCA PAGE (instructed by **Reynolds Porter Chamberlain LLP**) appeared on behalf of the **Defendant/Applicant**.

A P P R O V E D J U D G M E N T

JUDGE HODGE KC:

1 This is my extemporary judgment on a claim by Harrington Scott Limited against Coupe Bradbury Solicitors Limited which is proceeding in the Business List of the Business and Property Courts of England and Wales under claim number BL-2019-002077.

2 Over five days between 13 and 20 July 2022 I heard an application by the defendant, dated 30 March 2021, for summary judgment under CPR 24.2 and/or to strike out the particulars of claim under CPR 3.4 and/or the inherent jurisdiction of the court. On Michaelmas day 2022 I handed down my reserved judgment, which bears the neutral citation number [2022] EWHC 2275 (Ch). I had originally circulated the draft judgment on 5 September but that had generated further written submissions, initially from the defendant (and applicant), dated 8 September. In the light of those submissions, I directed further written submissions from the claimant (and respondent) which are dated 16 September; and I then received further written submissions on behalf of the defendant dated 20 September.

3 Before handing down my reserved judgment, Ms Rebecca Page (counsel for the defendant) and Mr Richard Bowles (counsel for the claimant) had agreed on the terms of an interim holding order consequent upon the remote handing down of my written judgment. Paragraph 1 of that holding order directed that the hearing relating to any arguments about costs, the form of order, any other consequential orders and directions, and any applications to this court for permission to appeal, should all be adjourned to the first available date convenient to the parties and the court, and to be listed before me, with a time estimate of half a day, plus half a day's pre-reading. In the event, the oral argument took place this morning, on Thursday 12 January 2023. The hearing concluded promptly at 1 o'clock; and this is my extemporary judgment following the argument on consequential matters.

4 The holding order also directed that the time for making any application for permission to appeal to this court by any of the parties should be extended until this adjourned hearing; and I extended time for the filing by any party of any appellant's notice or notices to 21 days after today. I gave directions for written submissions to be filed and served and, as a result, I have had the benefit of pre-reading the written submissions of Ms Page, who again appears for the defendant, and of Mr Bowles, who again appears for the claimant. There is a hearing bundle for the purposes of this hearing today which extends to a little over 620 pages; and there is a bundle of authorities extending to some 460 pages. That bundle is more extensive than was necessary because, on 5 December 2022, the defendant had issued an application for a third party costs order under s.51 of the Senior Courts Act 1981 in relation to the sole director and shareholder of the claimant company Mr Trevor Vickers. Happily, that application has been disposed of by way of a consent order that I approved yesterday. Effectively, the application for the third party costs order has been stood over until after the defendant has ascertained whether the claimant is in any position to discharge any liability for costs that may follow on from today's further order.

5 During the course of this hearing, Ms Page handed up a third witness statement of Ms Karen Morrish, a partner in the firm of RPC LLP (who are the defendant's solicitors), dated yesterday (11 January 2023), together with exhibit KM4, comprising some twenty-two pages of further documentation. There is before me a draft order settled by Ms Page, although it is accepted that it requires some amendment to reflect the consent order that was made yesterday in relation to Mr Vickers.

6 It is common ground that as a result of my substantive judgment, this claim should be dismissed and the particulars of claim struck out. Subject to any appeal, that will be the end of this claim. It is also common ground that, as a result of my substantive judgment, the successful party on both the claim and the application is the defendant. It is also common ground that the claimant should pay the defendant's costs of the claim, to include at least

part of the costs of the application that came before me in July, and the costs of this consequentials hearing, to be the subject of detailed assessment (if not agreed). It is also common ground that the claimant should pay the defendant interest on its costs at a rate of 3% per annum from the date of actual payment of those costs down to the date of this hearing and, thereafter, at the rate specified by s.17 of the Judgments Act until the date of payment. It is also common ground that there should be an interim payment on account of the claimant's costs liability to the defendant. That, however, is the extent of the matters that are agreed.

7 There are issues as to the basis on which the costs liability of the claimant should fall to be assessed. The defendant urges the court to direct that the costs should be assessed on the indemnity basis, whilst the claimant urges that they should be assessed on the usual, standard basis. The practical effect of the difference is that on an indemnity basis of assessment, any doubt falls to be resolved in favour of the receiving, rather than the paying, party, as is the case on a standard assessment; and, also, whilst costs must be both reasonable in amount and reasonably incurred, on an indemnity basis, unlike a standard basis, assessment, issues of the proportionality of those costs do not fall to be considered. This is a case in which the parties' costs have yet to be budgeted. That is relevant to the amount of any interim payment on account of costs. There is also a dispute as to the extent to which the costs of the summary judgment and strike out application should be awarded to the defendant. There is a further discrete issue as to the costs thrown away by the adjournment of the first scheduled hearing of this application, which had been listed before Deputy Master Arkush in December 2021 and was adjourned by him to come on, in the event, before me, last July.

8 The order made by Deputy Master Arkush on 13 December 2021, after hearing Mr Thomas Grant QC and Ms Emily Gailey (of counsel) for the defendant (and applicant), and Mr Richard Bowles (also of counsel) for the claimant (and respondent), recorded that the court

considered that the time estimate for the hearing of twelve hours and thirty minutes was insufficient. It also recorded that the court considered that the issues raised on the application were suitable to be heard by a High Court Judge, and that additional time of at least one day was likely to be required for preparation of the judgment. On that footing, the Deputy Master ordered that the application should be adjourned and re-listed, to be heard by a High Court Judge on the first available date, with a time estimate of four to five days, to include one day of judicial pre-reading, in addition to the minimum one day which was likely to be required for preparation of the judgment. The costs were expressly reserved. It is largely to address submissions made by Mr Bowles in his skeleton argument as to the events leading up to that adjournment (as recorded in that skeleton argument) that Ms Morrish's third witness statement, served yesterday, is directed.

9 I have had the opportunity of pre-reading the helpful, and detailed, skeleton arguments of both counsel. Happily, in light of the consent order that I approved yesterday, it was unnecessary for me to read that part of Ms Page's skeleton argument, beginning at paragraph 25, which is directed to the third party costs application in relation to Mr Vickers. However, I have read the remainder of that skeleton, and also Mr Bowles's skeleton; and I have done so referring to the relevant documents in the bundle for today's hearing. I have also been referred, during the course of today's hearing, to certain documents contained in the original trial bundle, which extended to almost 2,500 pages.

10 It is, as I say, common ground that costs should follow the event, and that those costs should include at least some of the costs of the application that was before me in July. However, although not separately highlighted in his skeleton argument, at paragraph 32 (1) Mr Bowles indicates that because the defendant brought an *"unnecessarily lengthy and unwieldy application before the court"*, and has only been successful on some of the issues - the precise number being in dispute between Mr Bowles and Ms Page - the defendant should not be entitled to recover all of the costs of the application for summary judgment and strike

out. Mr Bowles has attempted an analysis of the various issues at paragraph 21 of his written skeleton argument but Ms Page does not accept that characterisation of the issues. In particular, Ms Page notes that Mr Bowles's issue at (xiii) was not an issue on the substantive application itself but merely arose when I handed down my judgment in draft. It raised the question whether I should reconsider my findings on an issue as to the identity of the true parties to two of the relevant contracts (described in the judgment as the ERR and SVP contracts). Ms Page has identified the issues on which she maintains that the defendant (her client) was unsuccessful at paragraph 16 of her skeleton argument.

11 At paragraph 21 of his skeleton argument, Mr Bowles also identifies an issue (at (xi)) as whether the claim should be struck out due to the impossibility of a fair trial, on which he asserts that the claimant was successful. In my judgment, that is an unfair characterisation of my substantive judgment on that issue. What I said (at paragraph 244 of my substantive judgment) was that, for the reasons I had set out, the court would have been amply justified in refusing to allow what (if anything) remained of the claim to proceed to trial, but that I was conscious that that would be a most unusual, and draconian, course to take, and that the court should not do so if there was some other, less drastic, course available to it. I indicated that, in my judgment, there was such a course. In the exercise of the court's powers of case management, I had indicated that I should allow any remaining claim to proceed, but only on strict conditions, which I identified at paragraph 244, and which included, first, a comprehensive recasting and rewriting of the particulars of claim to limit it to those issues which, following my judgment, remained live and in issue; secondly, requiring the claimant to pay either the whole, or part, of the costs incurred by the defendant to date, with an interim payment on account, to reflect the fact that the new proceedings would supersede those which had gone before; and, thirdly, and perhaps crucially, requiring the claimant to provide security for the defendant's budgeted costs if and when those were approved by the court. I indicated that if whoever was funding the claimant had insufficient

confidence in the outcome of this litigation to provide the further funding required for that, then it would seem to me to be just, and in accordance with the overriding objective, for this claim to be struck out. I cannot therefore agree with Mr Bowles's submission that that was an issue on which the claimant (his client) had succeeded before me on the application.

12 I accept Ms Page's identification of the issues on which the defendant did not succeed on the application, as set out at paragraph 16 of her written skeleton. Effectively, the defendant lost on four out of the twelve substantive issues that had fallen for me to determine. Those issues were issue 3 (the parties to the ERR and SVP contracts); issue 4 (the assignment of those contracts); issue 6 (the termination of the ERR contract); and issues 1 and 11, which were addressed in argument together, and which related to a claim for interest on damages at 8% per annum, and also a claim for what was said by the defendant to be *"penal"* interest. On those issues, the defendant's application had failed.

13 Ms Page submits that on issue 3 (the parties to the two relevant contracts), in substance the defendant had succeeded because I found that I would have been likely to find that a company in the British Virgin Islands was the party that had contracted as principal with the contracting counterparty: on that issue, I said that I found the arguments of Ms Page for the defendant far more compelling than those of Mr Bowles for the claimant. However, I went on (at paragraphs 49 through to 53 of my judgment) to make it clear that I was satisfied that it was neither necessary, nor appropriate, finally to resolve that issue because I was satisfied that, on the footing that the contracting party to those contracts was, indeed, the BVI company, rather than the claimant, I considered there to be a triable issue, with real prospects of success, as to whether the defendant, as reasonably competent solicitors, should have identified that fundamental obstacle in the way of the underlying claim, and should have advised the claimant as to how it might overcome that obstacle by way of taking an assignment of the claim from the BVI company (after any necessary restoration to the register of companies in the BVI). I acknowledged that the claimant would need to amend

its particulars of claim so as to plead that issue properly; but I said that I did not consider that it would be a proper exercise of the court's discretion to circumscribe the freedom of any trial judge to determine the prior issue as to the identity of the parties to the contract by purporting to make any final determination of that issue in advance of trial, given that there had to be a trial on the issue of whether there should have been advice as to the need for an assignment of the underlying cause of action.

14 Ms Page emphasises that those two issues were premised on the need for an amendment of the existing particulars of claim, on which her application for summary judgment and strike out had been founded. She emphasised that, as pleaded, the case had no real prospect of success. There was no plea as to what the BVI company might have done, or what proportion of the ultimate proceeds of any successful claim it might have required as consideration for any assignment of the cause of action; and, viewing the matter in that way, meant that the claim was reduced to a claim for the loss of a chance of recovering part of the value of the underlying claim rather than the whole. For that reason, Ms Page submits that there should be no discount in respect of those two issues in relation to the costs of the summary judgment and strike out application.

15 In relation to the issues regarding interest, Ms Page emphasises that those issues were entirely parasitic on the validity of the claims under the three contracts, which the court determined had no real prospect of success. In relation to all four of the issues, Ms Page has produced an analysis, both in terms of time spent at the hearing and in terms of the paragraphs in Ms Morrish's supporting substantive witness statement, at appendix A to her skeleton argument. She has recorded the amount of time spent at the hearing on those issues in her skeleton. She calculates that some 32% of the time of the hearing had been spent in litigating those four issues, and less than 10% of the witness statement evidence of Ms Morrish had been devoted to them. Therefore, whilst resisting any reduction in the

defendant's recovery of the costs of the application, Ms Page submitted that any deduction should, at most, be limited to 10 to 15%.

16 Mr Bowles submitted that the length of the hearing of the defendant's application had increased the costs as a result of what he described as the defendant's *"sledgehammer to crack a nut"* approach, and that the claimant should not have to bear those costs. At paragraph 23 of his skeleton argument, Mr Bowles submitted that the costs of the proceedings had *"escalated as a result of the unnecessarily unwieldy manner"* in which the defendant had put its application.

17 Ms Page submitted that the defendant should be awarded all of its costs of the application and that there was no merit in Mr Bowles's submission that the claimant should only be required to pay part of the defendant's costs of the application on the basis that the defendant had not succeeded on all issues raised by the application. She referred me to observations of Sir Alastair Norris in *Sharp v Blank* [2020] EWHC 1870 (Ch), [2020] Costs LR 835 at paragraph 7. There Sir Alastair Norris had acknowledged that it was a commonplace that a successful party would not succeed on every aspect of its case. Notwithstanding that very frequent occurrence in litigation, the general rule that costs should follow the event still applied because costs were determined by reference to overall success. Sir Alastair warned that a degree of caution was needed against any too-ready departure from the general rule. There was no reason, in principle, why a party who succeeded in establishing one element of his cause of action, but failed to establish the others, should be regarded as only partially successful. In oral argument, Ms Page also emphasised what was said by Sir Alastair at paragraph 7(g): It was not the law that a successful party could only be deprived of the costs of an issue if he had **unreasonably** resisted that issue, any more than it was the law that he should be deprived of the costs of the issue **simply** because he had lost it. In singling out an issue for separate treatment by way of costs, the court was required to look for some objective ground (other than failure

itself) which, alongside failure, distinguished it from other issues, and caused the general rule to be disapplied.

18 Ms Page also referred me to the observations of Mr Stephen Jourdan QC, sitting as a Deputy High Court Judge, in *Pigot v The Environment Agency* [2020] EWHC 1444 (Ch), [2020] Costs LR 825, at paragraphs 5 and 6, where the Deputy High Court Judge emphasised that the mere fact that the successful party has lost on one or more issues does not, by itself, normally make it appropriate to deprive them of their costs, although it might be appropriate to do so if a discrete or distinct issue had caused additional costs to be incurred, or if the overall costs were materially increased by the unreasonable raising of one or more issues on which the successful party had failed.

19 I have naturally had regard to those observations and principles. I have to bear in mind that this was not a trial where factual issues, which were in dispute, fell to be finally determined. This was a paper application for summary judgment or strike out in advance of any trial. As the need for post-draft judgment submissions indicated, in my judgment, the way in which this application was mounted, on multiple discrete grounds, gave rise to a real concern that sight of the wood might, at times, have been obscured by the large number of trees one had to negotiate during the course of the hearing of the application. It does seem to me that this application could sensibly have been confined to fewer grounds than were, in the event, advanced.

20 So far as the identity of the true parties to the two relevant contracts was concerned, it seemed to me that that was all tied up with the next issue, and was unlikely ever to be appropriate to be determined on an application of the present kind, because of the potential for the defendant, as in fact happened, to say: "*If the claimant was not the appropriate party to those two contracts, the defendant, as my solicitors in the litigation, should have identified that fact, and advised me to seek the restoration of the BVI company to the*

register, and the assignment of those causes of action to the claimant, on appropriate terms, before kicking off litigation against the counterparties to the two relevant contracts."

21 Likewise, the issue of the termination of the ERR contract was an issue which was quite discreet and which, so far as the defendant is concerned, failed. Likewise, the issues of interest - both the claim for interest pursuant to statute and the claim for what was said to be penal interest - were entirely parasitic on the claims which the defendant was saying would never have any prospect of success. Since the defendant was seeking the striking out of those claims, there was little point in spending time, and devoting resources, to arguing about the basis upon which interest might be awarded.

22 It does seem to me that this is one of those cases where there are special factors which mean that the defendant's failure on those issues should, as a matter of the court's discretion, properly be reflected in a reduction in the costs awarded on the application. This is not a case where the defendant should be deprived of the costs of those issues simply because it lost them. There is some objective ground, other than that failure, which distinguishes the defendant's failure on those issues from its success on the other issues, and leads to a proportionate reduction in the recovery of costs on the application itself.

23 Looking at the time spent at the hearing, and the amount of time devoted to these issues in the witness statements, and doing the best I can, it seems to me that it would be appropriate to discount the costs of the application to be awarded to the defendant, and paid by the claimant, by a factor of one-third. I see no reason, however, why that reduction should apply to the quite separate and discrete costs of today's consequential hearing. So what I propose to do is to award the defendant the costs of the claim, save that the claimant should only have to pay two-thirds of the costs of the application issued by the defendant on 3 March 2021 up to the time I handed down my judgment on 29 September 2022.

24 That, however, is subject to a further point. The claimant submits that the costs thrown away by the adjournment of the hearing in December 2021 before the Deputy Master should fall to be borne by each of the parties. Mr Bowles submits that each party should bear their own costs of that hearing because it was lost as a result of:

(1) The defendant's failure properly to estimate the length of time it required for its application;

(2) The defendant's failure correctly to identify the level of judiciary required, which caused the matter to be adjourned; and

(3) What he says was the defendant's then instructed leading counsel's curious request for more time for personal reasons into which I need not go.

25 That last factor is disputed by Ms Morrish at paragraphs 7 to 8, 11, and 12 of her witness statement. Mr Bowles acknowledges that he is in no position to put forward evidence to contradict Ms Morrish. He does not propose to put in evidence to confirm his recollection of events; and he is in no position to put in evidence from the solicitors who were then instructing him (Collyer Bristow) because they no longer act in this litigation. So I am in no position to determine whether the third of the matters on which Mr Bowles relies has any validity.

26 Ms Page points to the fact that that the claimant's then solicitors (Collyer Bristow) had not disputed the defendant's suggested time estimate for the hearing. She also makes the point that the application properly fell within the jurisdiction of a Master (or Deputy Master). It had never been suggested by the claimant that the matter should be determined by a High Court Judge; and the Deputy Master's suggestion that the matter should be listed before a High Court Judge involved no criticism of the defendant for having listed the matter, quite properly, before a Master; and this was something that occurred to the Deputy Master as an

adjunct, and as subordinate, to his concerns that the time allotted for the hearing was inadequate.

27 I accept the force of all of those points; but, nevertheless, it does seem to me that there is force in Mr Bowles's point that **both** parties should have given consideration to the adequacy of the time estimate and sought an extension to it in advance of the hearing before the Deputy Master; and that the defendant should properly have considered seeking to confine the scope of the application to matters which could have been determined within the time estimate. In particular, those matters which I have already identified when making the one-third reduction in the costs of the application could effectively have been abandoned, albeit (if appropriate) only temporarily, so as to have enabled the Deputy Master to focus on the real issues which I have now determined in favour of the defendant, and which mean that the claim does not need to proceed to trial. That result has been achieved without any judicial determination of the true identity of the parties to two of the three contracts, or whether there was any breach of duty in failing to advise as to the need for, and the mechanism of, any assignment of the claims under the two contracts; without any consideration of whether the ERR contract should have been treated as terminated; and without any determination of the merits of the claims, as pleaded, for interest.

28 I am satisfied that it would be unjust for the costs thrown away by the unfortunate adjournment of the hearing in December 2021 to fall to be borne by either of the parties to this litigation. Therefore, I will direct that the costs of the application should not include the costs thrown away by the adjournment of the hearing before the Deputy Master in December 2021. I am not going to determine what those costs are now. That is a matter that will fall to be considered on the detailed assessment of costs; but for the purposes of determining an interim payment on account of costs, I propose to treat the costs as being the figure of £67,000-odd which appears in the document *"Further information on defendant's costs"* at pages 10 to 11 of exhibit KM4.

29 The next issue is to consider the basis upon which the costs of the claim and application should fall to be assessed. I am satisfied that there is no proper basis for distinguishing between the two sets of costs. Either both sets should be assessed on the standard basis or they should both be assessed on the indemnity basis.

30 Ms Page has set out the reasons why indemnity costs should be awarded at paragraph 18 of her skeleton argument. She submits that the conduct of the claimant has been *"out of the norm"*, in the sense that it is outside the ordinary and reasonable conduct of proceedings. She relies upon:

(1) The extraordinary circumstances of the case, and the claimant's dishonesty and unreasonable conduct as set out in my substantive judgment, and which she has highlighted at paragraphs 12 to 14 of her skeleton argument;

(2) The late abandonment of the claim for costs for the Moscow office (which I found to be dishonest) in the skeleton before the December 2021 hearing, after very substantial costs had been incurred on that issue on both the claim and the application;

(3) The claimant's late concession, part way through the hearing, that the evidence that Mr Vickers had given at paragraph 332 of his first witness statement in opposition to the defendant's application was wrong; and, finally,

(4) The concession that paragraph 126 of the particulars of claim should be struck out.

31 Ms Page sets out at paragraph 12 of her skeleton passages from my judgment where I have indicated my assessment that this was a deliberately exaggerated claim, dishonestly advanced by Mr Vickers, the claimant's sole director and shareholder, whose conduct, I am satisfied, must be attributed to the claimant. Those findings extended also to issues 7 and 8, relating to the eleven uninvoiced jobs and the creation of a false deed of assignment, about which I found that Mr Vickers had lied, both to the defendant, as the claimant's solicitors,

and to his retained counsel, both at the time and now to this court. I criticised Mr Vickers's clear willingness to procure the creation of a knowingly false document, and his account in his witness statement of those events, which I found to be wholly inconsistent with the contemporary documents, and which I also found should be rejected as false. I expressed myself entirely satisfied that Mr Vickers was neither a reliable nor a credible witness, whose evidence could not safely be relied upon.

32 I accept Ms Page's submission that it is unreasonable for the claimant to have pursued a dishonest claim. Aspects of the claim were entirely fanciful, lacking in reality, and without any substance or reality. I accept Ms Page's submission that such dishonest and unreasonable conduct has caused real financial prejudice to the defendant, as set out at paragraph 14 of Ms Page's written submissions.

33 I accept Mr Bowles's submission that the touchstone for an indemnity costs basis of assessment is whether there is something in the conduct of the action, or the circumstance of the case, which takes the case *"out of the norm"* in such a way as to justify an order for indemnity costs. I note the citations at paragraphs 14 and 15 of Mr Bowles's skeleton argument. However, I reject his submission, for the reasons that Ms Page has given, that this is not a case that falls outside the norm. In my judgment, this is clearly an appropriate case for the award of costs on the indemnity, rather the standard, basis.

34 I accept Ms Page's submission that the practical difference to which an indemnity assessment gives rise is not the appropriate basis for determining whether or not there should be an indemnity costs assessment. The legal test is whether a case falls outside the norm for litigation of this kind; but it does seem to me that the court is entitled to bear in mind the effect of an indemnity assessment in deciding whether it is appropriate, in the exercise of its discretion, to make an indemnity costs order, once it has determined that the

legal test has been satisfied, in the sense that the conduct of the paying party has been out of the norm for litigation of this kind.

35 In my judgment, that legal test is satisfied, and there would be nothing unjust in giving the receiving, rather than the paying, party the benefit of any doubt; and also nothing unjust in discounting issues of proportionality, although I suspect, given the fact that this is a professional negligence claim involving a substantial sum in money terms, that whether or not issues of proportionality do fall to be taken into account is unlikely to result in any real difference to the assessment of costs at the end of the day. For what it is worth, however, I am entirely satisfied that this is an appropriate case for directing a detailed assessment on the indemnity, rather than the standard, basis.

36 I then have to consider the amount of any interim payment on account of costs. Mr Bowles submitted that I should award an interim payment of only 50% of the amount that I consider is likely to be recoverable on a detailed assessment. Ms Page urged me to adopt a figure of 65%, bearing in mind that here no costs have been budgeted by the court. Had they been, Ms Page would have been contending for a much higher percentage, in the order of 90%.

37 I accept Mr Bowles's point that percentages adopted in previous cases are no binding guide to the court. However, it does seem to me that the general tenor of the authorities, at least in the last decade or so, has been to apply a figure in the region of 65%, or two-thirds. That figure has been adopted because it is generally considered to be the minimum that is likely to be recovered on a detailed assessment of costs (absent costs budgeting). That figure is likely to be even more appropriate where the costs fall to be assessed on the indemnity basis although, for the reasons I have given, I am not sure in practical terms that it will make much difference in the present case. In that regard, I accept Ms Page's submissions that the hourly rates applied by the defendant's solicitors are likely to be upheld on any detailed assessment, ranging as they do from £100 for a para-legal, or outdoor clerk, up to £290 per

hour for a partner practising in London. Those hourly rates are much less than one frequently sees in this court; and I suspect that they are artificially low because of the arrangements which I know tend to exist in relation to solicitors retained by indemnity insurers. Certainly, they are considerably less than the hourly rates that have been charged by the solicitors acting for the claimant in the present case.

38 I am entirely satisfied, having looked at all the authorities that have been referred to by Mr Bowles, that it is appropriate to assess the costs to be awarded, by way of interim payment on account, at a figure of two-thirds of the costs that are claimed by the defendant.

39 So, for all of those reasons, I will order that the claimant should pay the defendant's costs of the claim on the indemnity basis, save that the claimant should only have to pay two-thirds of the costs of the defendant's summary judgment and strike out application up to the date of the hand down of my judgment on 29 September 2022; and that those costs should exclude the costs thrown away by the adjournment of the December 2021 hearing. I am sure that the parties can reach agreement on the appropriate amount of those costs; and I will order an interim payment on account of two-thirds of the resulting costs figure.

40 For the avoidance of any doubt, I will take the figure for the costs thrown away at the adjournment of the December 2022 hearing as £67,057.50. The costs of today's hearing I will take at the figure of £15,425, which will, of course, fall to be reduced by two-thirds in terms of the interim payment on account.

41 That, then, leaves the claimant's application for permission to appeal. Without prejudice to any future application for permission to appeal, at paragraph 7 of his skeleton argument, Mr Bowles identifies four issues on which he would seek permission to appeal, although, in oral submissions, he addressed them in the order 1, 4, 2, and 3. Notwithstanding all the points made by Mr Bowles, both in his written and in his oral supplementary submissions, I am satisfied that there is no real prospect of success on any of those four issues for the reasons

that I have previously given in my substantive handed down judgment. It was not suggested that if there was no real prospect of success on any of those issues, then there was any other reason why an appeal should be heard.

42 So I refuse permission to appeal. I will set out my brief reasons in a Form N460, which I will fill out electronically and, if I am able to do so, will upload to CE-File.

LATER

(after further argument)

43 I do not think that going back and revisiting actual figures is any particular hardship or any valid reason for adhering to 29 September 2022, rather than the date the draft judgment was first circulated, which is 5 September.

44 Bearing in mind the further submissions that have been advanced before me, both by Ms Page and by Mr Bowles, on reflection, and notwithstanding the lack of success of Ms Page's attempt to get me to revisit issue 3, which did take very little time in terms of the submissions, it does seem to me that since Ms Page's written submissions did lead me to change the ultimate outcome of the application, I think it is appropriate, now that this separate point has been raised (which it had not previously), to re-visit the cut-off date for the two thirds/one-third split; and, on further reflection, and with the benefit of those further submissions, I think it is appropriate to take 5 September rather than the 29 September as the cut-off date for that split There must have been considerable further work undertaken by both parties after 5 September; and that work did result in a different order from that which I had previously envisaged, partly because I had failed to see the wood for the trees.

45 Therefore, I think it is appropriate to take 5 September as the cut-off date rather than 29 September. That is not going to lead me to revisit the amount I was proposing to order by way of interim payment. Essentially, it is going to be something in the order of the

aggregate of £195,904, plus two-thirds of £311,553, minus £67,057.50, plus two-thirds of £15,425. That two-thirds is to reflect the one-third reduction for an interim payment rather than any reduction on that figure on a proportionate issues basis.

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civil@opus2.digital