

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2022

Before :

THE HON. MR JUSTICE BOURNE

Between :

IMRAN ARIF

**Respondent/
Claimant**

-and-

DALBIR SINGH SANGER

**Appellant/
Defendant**

Rachel Sleeman and Zachary Kell (instructed by **James Chan & Co**) for the
Respondent/Claimant
Geoffrey Zelin (instructed by **Stradbrooks Solicitors**) for the **Appellant/Defendant**

Hearing dates: 23rd – 24th November 2021

**JUDGMENT ON COSTS AND
CONSEQUENTIAL MATTERS**

The Hon. Mr Justice Bourne:

1. Following my judgment on the Defendant's appeal and the Claimant's cross-appeal on 21 December 2021, I ordered and duly received written submissions on consequential matters. This is my decision on those matters.
2. It is common ground that the Claimant was to a large extent the successful party below and can expect to recover most if not all of his costs. It is also common ground, and I agree, that the costs of this matter in view of the amounts involved should be subject to detailed assessment if they cannot be agreed.
3. CPR 44.2 empowers me to make an order reflecting the fact that the Defendant nevertheless was successful in resisting the cross-appeal and some of the contentions contained in the Claimant's respondent's notice. Both parties' proposals realistically contemplate that power being exercised to some extent. The issue is to what extent, in order to reflect the overall justice of the case.
4. The parties have put forward competing versions of an order which would make different provision for the costs of the appeal and the cross-appeal. The Claimant suggests an order for his costs of the appeal and no order as to the costs of the cross-appeal. The Defendant suggests an award of 80% of the costs of the appeal (discounted to reflect the outcome in respect of the respondent's notice) and an order that the Claimant pay his costs of the cross-appeal.
5. Both parties also recognise that an alternative and perhaps simpler solution may be a single order of costs to the Claimant, discounted to reflect the more detailed outcome. The Claimant proposes an order for 90% of his costs. The Defendant's proposal is for 70% rather than 90%.
6. In my judgment, an order in that alternative form is more convenient and may lead to less expenditure on detailed assessment.
7. I have noted the parties' submissions on what proportion to deduct in order to reflect the issues on which the Defendant succeeded. I am not in a position to conduct a mini-detailed assessment, and my assessment is necessarily broad brush. Whilst the respondent's notice and cross-appeal raised issues which occupied only a small part of the argument, I bear in mind that if separate orders were made on the two appeals then the Defendant could expect to recover his costs of the cross-appeal, rather than merely not having to pay the Claimant's costs of it. But I also bear in mind the Defendant's recognition that it is difficult to quantify any costs incurred by him in respect solely of the respondent's notice and cross-appeal because his legal team were largely working on fixed fees for the appeal as a whole.
8. In my view it is fair to order payment of 75% of the Claimant's costs overall, bearing in mind that (a) some items in his costs schedule relate solely to the

respondent's notice or cross-appeal, (b) there remains a dispute, which I am not in a position to resolve, as to whether some items are within that category and (c) a small part of the Defendant's costs must be referable to the respondent's notice or cross-appeal but I am not in a position to quantify that part.

9. I deal next with the question of what if any payment on account to order. The Claimant's submissions propose the sum of £50,000 whilst the Defendant proposes £30,000.
10. I have had regard to the factors mentioned in *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm) and have sought to estimate the amount which may be recovered after detailed assessment, allowing a suitable margin for error and also bearing in mind the possibility of a successful appeal and the possibility of difficulty in recovering any overpayment.
11. The total figure given in the Claimant's costs statement at the appeal hearing was £72,081. I have awarded 75%, giving a figure of about £54,060 before detailed assessment. In my view it is reasonable to order an interim payment of 60% of that sum, i.e. £32,436.
12. I then turn to two issues of stays:
 - i. The Defendant seeks a stay on enforcement of my costs order, conditional on his paying the interim payment amount into court within 14 days, pending determination of his application for permission to appeal to the Court of Appeal against my dismissal of his appeal from Senior Master Fontaine's dismissal of his application for summary judgment.
 - ii. On 23 June 2021 Senior Master Fontaine ordered the Defendant to pay the Claimant's costs of his original summary judgment application in the sum of £43,860, but she stayed enforcement of that order on condition that that sum was paid into court, and it was so paid. On 4 August 2021, Kerr J ordered that stay to remain in place until determination of the appeal. The Defendant now applies for that stay to remain in place pending determination of his application for permission to appeal to the Court of Appeal.
13. It seems to me that to order a continued stay or stays, pending a permission decision by the Court of Appeal, is consistent with the approach which has been taken so far. Whilst time is passing and the Claimant continues to be kept out of his money, I do not consider that the circumstances warrant a change of approach, at least during what I hope will be a limited period until the permission application is decided. I express no view on the merits of the appeal beyond what has already been said in my judgment. However, if the appeal were to succeed, I cannot assume that the Defendant would have no difficulty in recovering monies paid to the Claimant. The Claimant has submitted two

witness statements testifying to his ownership of properties in which there appears to be significant equity. The Defendant objects to the fact that one such statement was served late, one working day after the deadline which I set for further submissions, though I have read it *de bene esse*. More important, however, is the fact that I have only this very selective information about the Claimant's assets and liabilities. In those circumstances, it remains the case that enforcement of both costs orders could lead to injustice. It is fairer, in my view, to let the Claimant's interests be protected so far as possible by payments into court.

14. If permission to appeal is refused then doubtless the stays will be lifted. If permission is granted, it will be for the Defendant to make any further stay application to the Court of Appeal.
15. Finally I deal with case management. Previously the parties agreed that the issue of limitation was suitable to be tried as a preliminary issue. The Claimant has now had a change of heart, proposing that the case be listed for a full trial.
16. It seems to me that that question, which was not argued before me and which is addressed only briefly in the written submissions, should be remitted to the Senior Master to be decided at the CCMC which both parties agree should be listed. The parties should carefully think through the scope of any trial of a preliminary issue and be prepared to analyse its benefits and disbenefits. Listing of that CCMC in my view must however await the outcome of the application for permission to appeal.