

Neutral Citation Number: [2024] EWHC 485 (TCC)

Case No: HT-2023-000145



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: 6 March 2024

Before :

MR ROGER TER HAAR KC

Sitting as a Deputy High Court Judge

Between:

WOL (LONDON) LLP

Claimant

- and -

(1) CROYDON INVESTMENTS LIMITED
(2) RGB P&C LIMITED (In Liquidation)
(3) STROMA BUILDING CONTROL
LIMITED

Defendants

Timothy Polli KC and Peter Brogden (instructed by **Kingsley Napley LLP**) for the **Claimant**
Dr Timothy Sampson (instructed by **Hill Dickinson LLP**) for the **First Defendant**
The Second Defendant was not represented

Jennie Gillies (instructed by **Beale & Co. Solicitors LLP**) for the **Third Defendant**

APPROVED JUDGMENT ON COSTS

This judgment was handed down by the court remotely by circulation to the parties representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 6 March 2024 at 10.30am

Mr Roger ter Haar KC :

1. In this matter on 9 February 2024 judgment was handed down on my behalf on the First Defendant's application to strike out the Amended Particulars of Claim and/or for summary judgment to be entered for the First Defendant against the Claimant.
2. I dismissed that application.
3. I now consider the following matters:
 - (1) The Claimant's application to re-amend the Particulars of Claim.
 - (2) The issues of costs as between the Claimant and the First Defendant.
 - (3) The issues of costs as between the First and Third Defendants.
4. Submissions in respect of those matters have been made on paper.

Re-Amendment of the Particulars of Claim

5. In paragraphs 50 to 55 of my judgment on the application I held that the Amended Particulars of Claim did not expressly set out the case against the First Defendant in certain respects but that this could be solved by re-amendment.
6. The Claimant has put forward a draft Re-Amendment. That seems to me to solve the deficiencies in the existing pleading: permission is granted for that pleading to be filed. Reservice is dispensed with.

Costs as between the Claimant and the First Defendant

7. The Claimant seeks an order that the First Defendant pay its costs of the application on the indemnity basis.
8. The First Defendant's primary position is that the Claimant should pay its costs on the standard basis; alternatively, it contends that the costs order should be no order as to costs or costs in the case.
9. There has been some discussion in correspondence and in the written submissions before me as to what happened at a mediation: I do not find those matters to be of any assistance in coming to my conclusions as to the costs of this application.
10. In my judgment, the central point is that the First Defendant has made an application which has substantially failed save insofar as the Claimant has had to seek to re-amend the pleading.
11. The First Defendant will pay 90% of the Claimant's costs of the application, the reduction being to reflect the Claimant's need to re-amend.
12. I decline to order that these costs should be assessed on the indemnity basis. In my view nothing has been put forward to justify an order on that basis.

13. I have been asked to assess those costs summarily. I decline to do so. The amount claimed (£85,321.21) seems to me to be rather on the high side. The order will be for the costs to be the subject of detailed assessment on the standard basis if not agreed.
14. However it is appropriate for a payment on account of costs to be made of 50% of 90% of the amount claimed, that is £38,394.54.

Costs as between the First Defendant and the Third Defendant

15. The Third Defendant seeks its costs.
16. The Third Defendant attended as it had an obvious interest in the outcome of the application.
17. The First Defendant resists this application on the basis that the Third Defendant was not a party to the application. Alternatively, it submits that the costs should be in the case.
18. In my view, it was reasonable for the Third Defendant to attend: it had an active interest in what would happen and in this Court's decision.
19. In those circumstances, the First Defendant having launched an application (in which I have found the Third Defendant had an active interest) and which failed, it is appropriate and just for the First Defendant to pay the Third Defendant's costs.
20. These will be summarily assessed: in my judgment the amount sought of £23,504.58 is reasonable: however I am unclear as to why the Third Defendant cannot recover the VAT element from HMRC. Accordingly the order should reflect that the VAT element will be payable if it cannot be recovered from HMRC.