Neutral citation [2019] CAT 14

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1303/5/7/19

Victoria House
Bloomsbury Place
London WC1A 2EB

25 April 2019

Before:

THE HONOURABLE MR JUSTICE ROTH
(President)

Sitting as a Tribunal in England and Wales

BETWEEN:

MELANIE MEIGH
(TRADING AS THE PRINKNASH BIRD AND DEER PARK)

Claimant

- v -

PRINKNASH ABBEY TRUSTEES REGISTERED

Defendant

Heard at Victoria House on 25 April 2019

RULING (COSTS CAPPING)

APPEARANCES

Mr Matthew O'Regan (instructed by Burges Salmon LLP) appeared on behalf of the Claimant.

Mr Philip Woolfe (instructed by Loxley Solicitors Limited) appeared on behalf of the Defendant.

1. This case has been assigned to the fast-track procedure. Pursuant to Rule 58(2)(b) of the Tribunal Rules 2015 there is therefore a mandatory capping of the recoverable costs. I stress that this applies to the recoverable costs: there is no impediment to either party spending more than the cap.

2. The reason there is cost capping is that this procedure was introduced to enable competition claims, which can notoriously become extremely expensive, to be accessible to smaller businesses and traders, who would be deterred either from bringing claims that may be reasonable, or from effectively contesting a claim, if faced with potentially very high fees.

3. The first preliminary observation I would make is that costs capping is not a question of carrying out a detailed assessment and going through every part of the costs budgets that the two parties have filed to make adjustments and corrections. That would happen post-trial.

4. Secondly, by way of preliminary observation, it is not simply a question of what costs are reasonable. The costs must be proportionate. As the CPR makes clear, costs which are disproportionate in amount may be disallowed or reduced, even if they were reasonably or necessarily incurred.

5. An explanation of the proper approach to the assessment of reasonable and proportionate costs was given by Leggatt J (as he then was) in a case from which I quoted in the previous judgment on costs capping before the Tribunal, *Socrates Training Ltd v The Law Society of England and Wales* [2016] CAT 10: *Kazakhstan Kagazy PLC & Ors v Zhunus* [2015] EWHC 404 (Comm) at [13]:

> "The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party."

6. It is against that background that I look at the figures put forward by the two sides. The Claimant's costs budget, as adjusted in the course of the hearing before me, now comes out at £347,549, excluding a contingency for

mediation. If there were to be an unsuccessful mediation, either party can apply for their cap to be revised, but I shall impose a cap on the basis that there is, between now and trial fixed to come on before the summer, no mediation. The total figure includes a sum of £27,000 for a survey of visitors to the bird park and the monastery.

7. Nonetheless, this total for a case of this nature is a very significant sum, and a significant imposition on the Defendant should the Claimant succeed. Clearly there will be a heavy cost for the Defendant should it fail, but I must stand back and ask whether that overall amount is proportionate for a case of this nature. I will return to the answer to that question in a moment after looking at the Defendant's costs budget.

8. The Defendant's budget, as revised in the course of the hearing, comes to £310,846 (the changes result from adjustment to the fees for the Defendant's surveyor and attendance of its two experts at trial). Within that budget there is allowance for three counsel, including two experienced juniors, the second dealing with landlord and tenant matters and a much more junior counsel effectively assisting Mr Woolfe. The total counsel fees for trial therefore come to £69,700. Again, standing back, this seems to me a high figure for a case of this nature. I understand the desirability of having specialist landlord and tenant assistance, but I am not persuaded that it needs counsel of that seniority and expense to assist Mr Woolfe when he also has, of course, the assistance of his solicitors, who are experienced in landlord and tenant matters.

9. I also find the level of pre-action costs quite high for the hours spent, although I recognise that there were extensive discussions before the proceedings started. In addition, I consider that the economists' fees are quite high.

10. It is with those observations in mind that I stand back and ask what should be a fair sum to be spent, applying the approach outlined by Leggatt J and recognising that all costs incurred may not be recoverable within a cap. It seems to me that this is a case where the recoverable costs under a cap should not rise above £300,000, and should fairly be a little below that level. I will therefore cap the Defendant's costs at £275,000. The Claimant's costs would

be at the same level save for the fact that she is having the survey conducted and for that reason I will cap her costs at £300,000.

The Honourable Mr Justice Roth
President

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 25 April 2019