

Neutral Citation Number: [2015] EWHC 3167 (TCC)

Case No: B20CL068

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday 2nd November 2015

Before :

THE HON MR JUSTICE COULSON

Between:

IOURI CHLIAIFCHTEIN
and
DONALD JESSOP

Claimant

Defendant

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(Transcript of the Handed Down Judgment of
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Mr Nicholas Isaac (instructed by **Morrisons Solicitors LLP**) for the **Claimant**
Mr Tim Chelmick (instructed by **Kennedys Law LLP**) for the **Defendant**

Hearing date: 2 November 2015

Judgment
As Approved by the Court

The Hon. Mr Justice Coulson:

1. APPLICATION

1. This is an application by the claimant to transfer his claim, currently brought against the defendant, Donald Jessop, in the Central London County Court (Technology and Construction List), into the TCC in the High Court. The basis of the application is that the issue raised by Mr Jessop, that he is immune from suit, is a point of importance and complexity, and in consequence justifies the transfer into the TCC.

2. BACKGROUND

2. The background to this application is factually complicated, but it is happily unnecessary to deal with very much of the detail. The underlying difficulties stem from a building project in Grosvenor Crescent, Belgravia, where the claimant (who owns No. 10) is in dispute with his neighbours, Wainbridge Estates Belgravia Limited, (the owners of Nos. 11 to 15). It is Wainbridge who are currently developing their site. Some of the background to the development, and the problems of noise and vibration, are set out in my judgment dealing with the claimant's first application for an injunction at [2015] EWHC 47 (TCC).
3. Following that judgment, the matter moved on and on 30 March 2015, a third party wall award was issued. It is that third party wall award which lies at the heart of the claim now pursued against the defendant.
4. The third party wall award of 30 March 2015 was made between two party wall surveyors: Mr Redler, who was Wainbridge's surveyor; and Mr Jessop, who was the third surveyor appointed by the other two pursuant to Section 10(1)(b) of the **Party Wall Act 1996**. For reasons which are not apparent, Mr Levy, the claimant's surveyor, was not involved.
5. The claimant did not accept the validity of the third award and he challenged it in appeal proceedings which he issued in the Central London County Court. The result was a hearing on 27 May 2015 before HHJ Bailey. Following argument (of which I have a transcript), the parties then took advantage of an adjournment to discuss the matter further, and they were able to settle their differences in respect of the third award. Essentially, what happened was that the third award was amended by agreement and a good deal of further material was added to it, all at the request of the claimant.
6. Although the question of costs was not resolved at the time of the settlement of the proceedings on 27 May, I am told by Mr Isaac that this issue too was subsequently resolved. I have seen a consent order dated 19 August 2015 in which it was agreed that Wainbridge would pay the claimant's costs of the appeal against the third award, to be assessed on the standard basis.
7. Notwithstanding the settlement of both the appeal and the issue of costs on terms which were favourable to him, the claimant is pursuing two separate sets of proceedings arising out of the third award. These have been brought against both Mr Redler and Mr Jessop. The proceedings against Mr Redler are currently in the TCC.

The proceedings against Mr Jessop are in the Central London County Court. It is those proceedings which the claimant seeks to transfer today.

8. I should make clear, before turning to the relevant principles, that it is agreed that the amount in dispute in these proceedings is extremely limited. Because of the agreement that Wainbridge will pay the claimant's costs of the appeal on the standard basis, it appears that the only loss suffered by the claimant as a result of the third award is the difference between the costs that he will recover from Wainbridge on the standard basis, and the costs which he actually incurred. I am told that that figure is likely to be in the region of £17,000.
9. Accordingly, the claimant currently has one set of proceedings against Mr Jessop in the Central London County Court, and another set of proceedings against Mr Redler in this court, where the maximum value of the two claims combined is in the order of £17,000. Thus, whatever principle the claimant believes to be at stake arising out of the third party wall award, the underlying economics of his stance are baffling.

3. PRINCIPLES

10. CPR 30.3(2) sets out the relevant matters to be taken into account by the Court when considering any transfer. Those matters are as follows:

“30.3(2)

- (2) The matters to which the court must have regard include –
 - (a) the financial value of the claim and the amount in dispute, if different;
 - (b) whether it would be more convenient or fair for hearings (including the trial) to be held in some other court;
 - (c) the availability of a judge specialising in the type of claim in question and in particular the availability of a specialist judge sitting in an appropriate regional specialist court;
 - (d) whether the facts, legal issues, remedies or procedures involved are simple or complex;
 - (e) the importance of the outcome of the claim to the public in general;
 - (f) the facilities available to the court at which the claim is being dealt with, particularly in relation to –
 - (i) any disabilities of a party or potential witness;
 - (ii) any special measures needed for potential witnesses; or

- (iii) security;
 - (g) whether the making of a declaration of incompatibility under section 4 of the Human Rights Act 1998 has arisen or may arise;
 - (h) in the case of civil proceedings by or against the Crown, as defined in rule 66.1(2), the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London.”
11. Because of the specialist nature of the TCC, it has been necessary over the years for the judges to consider the sorts of claims that could or should be transferred either into or out of the TCC: see, for example, *Brynley Collins v Drumgold* [2008] EWHC 584 (TCC). The most recent case in which such guidance was given is *West Country Renovations Ltd v Mr and Mrs McDowell* [2012] EWHC 307 (TCC). At paragraph 10 of his judgment, Akenhead J set out the following guidance:
- “10. With that in mind and having consulted with the other High Court judges of the TCC, the approach in the High Court in London will be as follows:
- (1) Generally, claims which are for less than £250,000 should be commenced in County Courts or other High Court centres outside London which have TCC designated judges.
 - (2) However, a non-exclusive list of exceptions is as follows:
 - (a) Cases involving adjudications, including enforcements and arbitrations may be started in the High Court, irrespective of the financial amount involved; this is justified by the need to build up a body of case law which is consistent in these important areas of construction law business.
 - (b) International cases of any value will ordinarily be accepted. These will involve cases between non-resident (in the UK) parties or cases involving foreign projects or developments. This is explicable on the basis that for such cases, London is, commonly if not invariably, the first port of call in such cases, overseas parties will expect a TCC High Court judge to hear the case and the judges here are experienced in international work.

- (c) Cases involving new or difficult points of law in TCC business or which have issues of technical complexity suitable for a High Court judge.
- (d) Any test case or case which will be joined with others which will be treated as test cases. Examples could be a fire supposedly caused by a washing machine, car or lorry where the value of the claim is a five- or six-figure sum but it may be joined with others in which similar points are being taken.
- (e) Public procurement cases. As the TCC in London has built up an expertise and experience over the last 4 years, it is sensible if the judges in the TCC deal with this interesting, important and developing area of law and practice.
- (f) Part 8 and other claims for declarations.
- (g) Claims which cannot readily be dealt with effectively in a County Court or Civil Justice centre by a designated TCC judge.
- (h) Complex nuisance claims brought by a number of parties, even where the sums claimed are small.
- (i) Claims for injunctions.

If there is any other good reason (even if not mentioned above) why any proceedings instituted in the TCC in London should remain in the High Court, the Court will retain the case.”

4. THE GENERAL POSITION

12. It follows from paragraph 10(1) of the judgment in ***West Country*** that the claim against Mr Jessop, with a likely value of £17,000, is far below the figure of £250,000 which Akenhead J indicates as being the cut-off for claims in the TCC. On the basis of value, it is clear that the claim against Mr Jessop was started in the right place.
13. There are other reasons why it is safe to conclude that Central London County Court is the correct place for this litigation. The first is a general point. Central London has a Technology and Construction List. Judge Bailey and Judge Dight QC (who do the work in that List) are experienced judges who regularly undertake this kind of work.
14. Secondly, Judge Bailey has already had an involvement in this development and the issues arising out of the third award. The hearing in front of him on 27 May gave rise to the consent orders to which I have previously referred.

15. Thirdly, it appears that Judge Bailey has already made directions in the claim against Mr Jessop and has timetabled a Costs and Case Management Hearing for this Friday, 6 November 2015. That hearing would have to be abandoned if this claim was transferred into the TCC.
16. Accordingly, given the value of the claim, the experience of the judges in Central London County Court (both generally in relation to construction work, and particularly in relation to the issues arising out of the third award), and the imminent CCMH, it seems to me that all of the factors point the same way: that this is a claim that should stay in the Central London County Court, where it was commenced. However, on behalf of the claimant, Mr Isaac has one submission to counter all of that, namely the importance and/or complexity of the point of law raised in Mr Jessop's defence.

5. THE COMPLEX ISSUE POINT

17. The point that is taken by Mr Jessop in his defence is that, as the third party wall surveyor called in by the parties' respective surveyors, he was exercising a quasi-judicial function. He maintains that, in those circumstances, he owed no duty of care to the claimant and/or that he is immune from suit.
18. There is no doubt that that is an interesting point, although issues of immunity often arise in claims against a person exercising a determinative function. It is certainly not limited to the position of a third party wall surveyor under the 1996 Act.
19. However, I am not sure that it is a matter of great public importance because, as Mr Chelmick rightly points out, it is not an issue that has so far arisen out of the legislation, even though the Act is now 20 years old. I imagine that the principal reason for that is that controversial party wall awards are dealt with and resolved by the appeal process. It is not usually considered necessary or fruitful to pursue individual surveyors for their part in party wall awards which may be the subject of a subsequent appeal. The economics of this case, to which I have previously referred, would appear to bear that out.
20. Moreover, even accepting that the point is interesting, I do not consider that it is particularly complex. I consider that the judges of the Central London County Court would be well able to deal with it.
21. Most important of all, I consider that any submission that could be made here about the interesting or complex nature of the issue is completely overwhelmed by all of the other considerations to which I have referred at paragraphs 12-16 above. The likely value of the claim alone makes it imperative that this claim stay in the Central London County Court.
22. I should add that, although the particular facts of this case allow of no other result, the TCC is deciding all transfer applications squarely on the basis of the guidance in **West Country**. As a general rule, basic costs considerations will usually take precedence over points of alleged legal interest or complexity. It is now very rare for claims worth less than £250,000 to be allowed to remain here, and there are some who think that, with the increasing pressure on the resources in both the QBD and the Rolls Building, that cap will have to increase.

6. CONCLUSIONS

23. Accordingly, although I acknowledge that these things are always a balancing act, I consider that this application must be refused. It is not appropriate for this low value claim to be transferred to the TCC.
24. Finally, I note that the claim against Mr Redler has been issued in the TCC. It follows from what I have said that I consider that to be an error. It is important that the claimant take all immediate steps to transfer that case out of the TCC and into the Central London County Court. I cannot make that order today because, amongst other things, Mr Redler's solicitors are not present and do not have notice of it. But given that Judge Bailey is dealing with the matter on Friday, and given that he is endeavouring to get to grips with the question of costs, then it does seem to me that the sooner he knows that there is a second set of proceedings, the better. Beyond that, I am unable to comment further.