

Dispute Resolution
Case Law Update
Rosling King LLP



Case Summary

In 2017 the Claimants (“**the Kings**”) brought a claim (“**the Misrepresentation Claim**”) in fraudulent misrepresentation against 3 Defendants (“**the Primekings Defendants**”) in relation to the sale of a company. The trial was listed for 20 days, but on day 10 the Kings discontinued their claim, apologised to the Primekings Defendants and consented to pay the costs of that action on the indemnity basis. The Court ordered the Kings to pay £1.7million on account of costs.

The Kings then brought a claim in unlawful means conspiracy against the Primekings Defendants, their legal representatives and their leading counsel (“**the Conspiracy Defendants**”) in the sum of £58million plus exemplary damages. The Kings claimed that the Conspiracy Defendants had conspired to falsely inflate their costs in the Misrepresentation Claim in order to put undue pressure on the Kings to discontinue their claim.

The Conspiracy Defendants applied for strike out/reverse summary judgment, and that application was heard by Cockerill J in February 2021. In April 2021, in a detailed and considered judgment which ran to 93 pages, Cockerill J found that the claim was “totally without merit”, and the strike out was granted. Cockerill J stated:

"The claim lacked rational basis at the very first stage. There was no properly pleadable cause of action because each claim lacked at least one constituent element. I think my conclusion is that the claim was totally without merit at that stage. When one adds to it that there was an element of the argument on abuse as well, that might add something, but it really stands or falls on that first part. So I am going to certify this case as having been totally without merit".

Costs were awarded against the Kings, to be assessed if not agreed, and a payment on account was ordered in the sum of £1,017,500. Permission to appeal was refused.

The Wasted Cost Application

Having failed to recover the costs awarded against the Kings, the Conspiracy Defendants made an application to the Commercial Court for wasted costs against the Kings’ solicitors, Metis Law, and Counsel, Christopher Newman. The application was to be heard in 2 stages, in accordance with the procedure at CPR Practice Direction 46.

Cockerill J having agreed to recuse herself, Stage 1 of the application was heard by Jacobs J in December 2022.

It was noted in the judgment that the leading cases remain that of *Ridehalgh v Horsefield [1994] Ch 205* and *Medcalf v Mardell [2002] UKHL 27*. It was also strongly emphasised that applications for wasted costs are a summary procedure, and the hearing of them should be measured in hours rather than days.

Jacobs J noted that the Conspiracy Defendants had suggested that they would need a 3-day hearing to dispose of the matter and had incurred very significant costs up to the point of the Stage 1 hearing. They had produced statements of grounds which were 44 pages long and

referred to 16,000 pages of documents. They advanced at least 8 alternative cases on causation. The background to the application was extremely complex and arguments regarding causation were likely to be complicated and require significant argument.

He also found that, although Cockerill J had held that the underlying claim was totally without merit, that did not mean that there were not points that were fairly arguable. Further, in any event, the Kings strongly believed that they had been wronged, and would have pursued a claim regardless of the advice of their legal representatives. These points would be a matter for evidence at the Stage 2 hearing.

Jacobs J therefore found that the application for wasted costs was wholly unsuitable for determination in the summary process.

Jacobs J also noted that, in an application for wasted costs where the underlying claimant has not waived privilege (as in this case), the Court is required to make inferences about what was known to the legal representative at the time they were instructed, and what advice was given, including any advice given to solicitors by counsel. In those circumstances, it is very difficult for a Court to satisfy itself that a legal representative acted improperly or negligently. Where there is any doubt, the benefit of that doubt must be given to the legal representative.

Commentary

This is a useful reminder of the very stringent test the Courts will apply when considering whether a wasted costs application is appropriate. The Applicants in this case sought to argue that a wasted costs application lasting several days was proportionate to the amount of wasted costs being claimed. The Court disagreed.

When considering making a wasted costs application, even following high-value Commercial Court claims with large costs awards, applicants must be conscious of the fact that it is a summary procedure; it is not a substitute for complex professional negligence proceedings where a determination at trial is more appropriate. Any claims for wasted costs against legal professional should be approached with care.

For further information, please contact [Lauren Pardoe](#) or the Partner with whom you usually deal.