IN THE ROYAL COURT OF GUERNSEY

Civil Nos 2081 and 2089

BETWEEN

JANICE MARGARET DOCKERILL

Applicant

-and-

STEPHEN PAUL CHILCOTT

Respondent

AND BETWEEN

STEPHEN PAUL CHILCOTT

Applicant

-and-

JANICE MARGARET DOCKERILL

Respondent

Judgment handed down 27th April 2018

Before: Her Hon Hazel Marshall QC, Lieutenant Bailiff

JUDGMENT ON COSTS

Cases and legislation referred to:

Royal Court Civil Rules 2007 rr 82 and 83

Hulme v Matheson Securities (Channel Islands) Limited 1997 24 GLJ 80

Introduction

1. The judgment of the court in the two above applications was handed down on 22nd December 2017. Essentially, Mrs Dockerill succeeded in her application to remove the caveat lodged with the Ecclesiastical Registry by Mr Chilcott against her being granted probate of the estate

of her mother, the late Mrs Margaret Chilcott, and she also succeeded in resisting Mr Chilcott's application to be appointed executor of the estate of his father, the late Mr Stephen Chilcott.

2. At the conclusion of that judgment, I indicated that my provisional intention was to make no order as to costs in respect of either application, but that I would give liberty to either party to apply on paper to vary those orders, within 21 days. Mrs Dockerill made such an application, seeking an award of costs in her favour on the indemnity basis in respect of both applications. By an Act of Court made on 9th March 2018 I therefore gave directions for Mrs Dockerill to serve and file written submissions in support of her application, with provision for Mr Chilcott to reply if so advised and for any further answer, if necessary. Mrs Dockerill filed her submissions in due time. Mr Chilcott did not respond. His time for doing so having expired, I now proceed to make my determination on the papers.

The application

3. Mrs Dockerill seeks her costs of both applications on the indemnity basis on the grounds that she was the successful party in both applications, thus entitling her to her costs in principle, but that in the circumstances of this case, those costs should be awarded on the indemnity, rather than merely the recoverable, basis.

The law

4. The court's jurisdiction to award indemnity costs is undoubted: see Rules 82 (1) and 83 (1) and (2) of the Royal Court Civil Rules, 2007. The circumstances in which the court may do so are laid down in wide terms in Rule 83 (2), and encompass not only any "*special circumstances of the case*" (Rule 83(2) (a)), but also, and specifically, where the court considers that a party has

> *"pleaded or otherwise pursued or defended an action claim or counterclaim unreasonably, scandalously, frivolously or vexatiously or has otherwise abused the process of the Court"* (Rule 83 2 (b)).

5. Advocate Hay on behalf of Mrs Dockerill has referred me to both the English authorities which have provided guidance in the Guernsey courts as to the principles of the jurisdiction, and also to several Guernsey decisions, only one of which I need to cite. In a nutshell, their tenor is that the court may and will award indemnity costs where (i) there is some aspect of the conduct of the relevant party or circumstances which takes the case "*out of the norm*" as regards the pursuit, forceful though it may permissibly be, of contentious litigation, and (ii) that the court regards it as appropriate in all the circumstances to mark its "*disapproval*" of the conduct of the relevant party by imposing the sanction of a liability to indemnity costs.

6. In essence, therefore, it is conduct which is both out of the ordinary run of aggressive litigation conduct, and is regarded by the court as sufficiently reprehensible to merit a costs sanction, which justifies the award of indemnity costs. Whilst the court's discretion is unfettered, and depends always on the particular circumstances of the case, in my judgment the particular examples cited in Rule 83(2)(b) are significant for illustrating the type of conduct aimed at. It is where a party has behaved in a manner which even an opponent in a fiercely fought dispute ought not to have to deal with, either because it has caused him or her unreasonable and unnecessary costs, or because it has become tantamount to harassment - I note, for example *"... as a personal vendetta or in an improper and oppressive manner...":* see per Southwell JA in *Hulme v Matheson Securities (Channel Islands) Limited* 1997 24 GLJ 80 at p 9. To use the court process in this way, rather than simply as the forum for obtaining a resolution of the dispute in issue, even if fought with determination, is an abuse of the court process, and the court will therefore, if and insofar as it thinks it appropriate, seek both to

redress the matter in the instant case by awarding the injured party indemnity costs, and to discourage others from descending to similar unreasonable conduct by making an example.

Discussion and decision

7. Having considered all the matters advanced by Advocate Hay on Mrs Dockerill's behalf, I am of the view that, in principle, Mr Chilcott's conduct of and about this litigation has crossed the line so as to be "out of the norm" for what is to be expected in the reasonable, if permissibly vigorous and tenacious, conduct of litigation, and to have done so to a sufficient extent that a costs sanction is appropriate, to mark the court's disapproval. This is even allowing for the fact that he has been acting in person for approximately the last year, (including during the actual trial of the applications) and could not therefore be expected to bring the judgment of an experienced lawyer into an assessment of what was, or would not be, reasonable litigation conduct.

8. The essence of Advocate Hay's submission is that "*throughout this litigation Mr Chilcott has conducted himself in an offensive, obstructive and unco-operative manner*" to the extent that it is appropriate for the court to award Mrs Dockerill her costs on an indemnity basis. He refers to Mr Chilcott's general bellicose approach to litigation and attendant correspondence, his readiness to make extravagant and speculative allegations of misconduct and reprehensible behaviour against a wide range of people (Mrs Dockerill, her mother, the professional witness to his father's will and Mrs Dockerill's lawyers, amongst others) without substantiation, his failure and refusal to retract or modify these accusations in the face of detailed and reasonable explanations and refutations, and his underlying obsessive animosity to the deceased Mrs Chilcott and by extension to her daughter, Mrs Dockerill, which has apparently driven so much of his conduct in this action, all of which has caused extensive increased costs to Mrs Dockerill, in seeking to deal with ever more wild and wide-ranging allegations.

9. With regard to the Caveat Application, he points out that Mr Chilcott was warned, on several occasions in correspondence from Mrs Dockerill's advocates that if he persisted in maintaining the caveat, Mrs Dockerill would seek her costs of any necessary application to have it removed against him, on the indemnity basis.

10. In my judgment, and having reviewed the entire history of these applications and the evidence, this submission is fully made out. Mr Chilcott's approach to this litigation against Mrs Dockerill has been obsessive and extravagant to the point of being overbearing and oppressive, and pursued largely out of his extreme animosity towards the late Mrs Chilcott, in a manner resembling a vendetta.

11. I should note that Advocate Hay also refers to other aspects of Mr Chilcott's conduct, such as that he sought to rely, at the hearing, on matters which this court held were not open to him in the light of the settlement agreement which he had entered into in 2016, compromising an action brought by himself and his half-brother against the late Mrs Chilcott, to contest the validity of the last will of his father, Mr Stephen Chilcott. I would not place weight on this point, however, as the precise effect of the terms of the settlement agreement was, in my judgment, quite a difficult matter of legal interpretation, and not one which was so obvious that Mr Chilcott's conduct in merely pursuing his own (mis)interpretation of it would have been sufficiently outside the norm of reasonable behaviour as to justify a general sanction of indemnity costs. (An adjustment specific to this issue might possibly be argued to have been appropriate, but in the circumstances this does not arise.)

12. Advocate Hay also relies on the Jurats' recorded perception of Mr Chilcott as being a largely unreliable witness in the absence of corroboration. Again, though, this is not on its own, in my judgment, grounds for an award of indemnity costs, as it is not suggested that Mr Chilcott

was deliberately and dishonestly lying to the court, as opposed to having convinced himself, however unreasonably on an objective view, that what he was saying was right. If merely being disbelieved as a witness were grounds for an award of indemnity costs, there would be many more such orders than are in fact made, or regarded as appropriate.

13. Lastly, Advocate Hay has referred to Mr Chilcott's unco-operative conduct subsequent to the trial. I am concerned with the costs of and incidental to the trial itself, however, and in my judgment this is not relevant to the costs order which it is appropriate to make here, even though it may well confirm the basis on which I do make such an order. This is because such conduct has not affected or exacerbated the actual costs in question. Likewise, insofar as Mr Chilcott's style of correspondence has merely been offensive it is not, in my judgment, of direct weight. It is where such conduct goes further and makes the quantity, scope or portent of the correspondence overbearing and oppressive, that it does do so.

14. In principle, therefore, I will accede to Mrs Dockerill's application for indemnity costs, but with one qualification, although it may well in practice be a minor one.

15. In the judgment of the court I indicated, at Paragraph 36, that Mr Chilcott did have a legitimate interest in lodging a caveat at the Ecclesiastical Registry against the grant of probate to the estate of Mrs Margaret Chilcott, because of the fact that if a grant to Mrs Dockerill were to be made, it would automatically constitute Mrs Dockerill executor by representation of the estate of his own father Mr Stephen Chilcott, and Mr Chilcott had an arguable case (albeit that it ultimately failed) that such executorship should appropriately be conferred upon him. I indicated at Paragraph 147 of the judgment that this meant that the lodging of the caveat had not, in itself, been misconceived or an abuse of the process of the court, and that it had therefore been reasonable in principle for Mr Chilcott to require the court's directions to be sought. In the normal course, the costs of resolving a procedural issue about the appropriate administration of an estate, if reasonably raised and pursued, would properly be costs of the administration of the estate, rather than falling directly on the parties. However, I took the view that in the circumstances of this case, the appropriate course, all other things being equal, would be to make no order as to the costs of that application as the circumstances certainly did not, *prima facie*, justify an award of any costs to Mr Chilcott out of the relevant estate, even though they equally might not demand that he pay them, absent any application by Mrs Dockerill.

16. Advocate Hay's arguments on behalf of Mrs Dockerill have not sought to differentiate any part of her costs incurred upon either application, whether to pay regard to this point, or at all. His submission is based only on the general grounds of Mr Chilcott's oppressive and unreasonable conduct referred to above, and, with respect to the Caveat Application, to the fact of warnings given to Mr Chilcott that if he did not (in effect) give up his claim to maintain the caveat, indemnity costs would be sought against him.

17. In my judgment, though, it is appropriate to pay some regard to the fact that the lodging of the caveat was the only procedure by which Mr Chilcott could protect his (proper) position. Mr Chilcott lodged his caveat on 11th January 2017. Mrs Dockerill's application to remove the caveat was launched on 17th February 2017. By a consent order of 10th March 2017, when Mr Chilcott still had legal representation, Mrs Dockerill was directed to file her evidence by 31st March 2017, with a timetable for further evidence and trial, although the timetable apparently slipped. I do not know why it did so, but I do not regard it as necessary or proportionate to investigate this. .

18. I take account of the facts that (1) lodging and maintaining the caveat was the only fundamental method by which Mr Chilcott could protect the interest in the matter which the court has found him to have had, but that (2) it seems to me that there was never any legal basis on which it could have been argued that Mr Chilcott was entitled to prevent Mrs

Dockerill from administering the estate of *Mrs* Chilcott, even if under some interim conditions as to keeping records, etc. This was never suggested by Mr Chilcott and although it was not broached by Mrs Dockerill, this is no fault of hers, in the light of Mr Chilcott's attitude of obvious intransigence. I therefore consider that a fair recognition of the balance of reasonableness and unreasonableness in respect of Mr Chilcott's pursuit of his position in this application is therefore drawn by my making no order as to the costs of the Caveat Application up to the stage (and including the costs of) the Consent Order of 10th March 2017, but ordering that Mr Chilcott should pay Mrs Dockerill's costs incurred thereafter, on the indemnity basis.

19. I should add that I have taken into account the apparent evidence that Mr Chilcott regarded the maintaining of the caveat as a tactical weapon to be deployed in his general contest with Mrs Dockerill; I regard that attitude as amply taken into account in my order above. I should also add that I have not thought it right to make any adjustment in respect of the costs of the Executorship Application because I find that Mr Chilcott's oppressive and unreasonable conduct has so thoroughly permeated his conduct of that application that doing so is not appropriate.

Conclusion

20. For the reasons given above, therefore, it is ordered that Mr Chilcott do pay to Mrs Dockerill

    (1) her costs of the Caveat Application incurred after 10th March 2017 and

    (2) her costs of the Executorship Application,

    all such costs to be paid on the indemnity basis and to be taxed if not agreed. For the avoidance of doubt, such costs are to be taken to include also the costs of this costs application. There will be no order as to the costs of the Caveat Application up to and including 10th March 2017.

Lt-Bailiff Hazel Marshall QC

27th April 2018