Courts report

Gary Knight summarises some interesting recent costs and procedural cases

***CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd and various other parties* – Coulson J – 29/10/2014 [2014] EWHC 3546 (TCC)**

This was a significant matter in which some £18m was sought from the defendant contractor, with third, fourth, fifth and sixth parties joined.

The decision of Coulson J dealt with case management and timetables, though he was also required to consider the issue of budgets. The matter had commenced at a time when the filing and exchange of budgets was not compulsory, as the mandatory limit was £2m when the claim started (indeed, the sum sought was significantly higher that the revised mandatory limit of £10m). But the defendant invited the court to exercise its overriding discretion to order the provision of costs budgets. The defendant's application was, not surprisingly, supported by the various third parties, but opposed by the claimant.

Two points of issue were identified:

1) Was there, in fact, any discretion?

2) If so, was the discretion fettered?

On point one, Coulson J was in no doubt that the court had discretion, referring to the original wording of Civil Procedure Rule 3.12(1).

In respect of point two, the judge took the view that the exercise of the court's discretion was unfettered, finding nothing in the CPR to suggest otherwise. He held that discretion 'extends to all cases where the claim is for more than £2m (old regime) or £10m (new regime)'.

Coulson J went on to add that in cases where an application was made for the filing and exchanging of costs budgets, the court had to 'weigh up all of the particular circumstances of the case' and in order to decide whether to exercise its discretion, the court should be provided with such budgets.

A further point considered was a submission made on behalf of one of the third parties, that the defendant should provide a number of different costs budgets, dealing with the defence of the claims of the claimant, and then separately with its claims against the other parties. Coulson J agreed with the defendant that such an exercise would be 'unfair and not in accordance with the overriding objective'.

***Altomart Ltd v Salford Estates (No. 2) Ltd* – CA (Civ Div) – 29/10/14 [2014] EWCA Civ 1408**

A number of decisions provided a reminder to all that *Mitchell* is far from gone or forgotten. This case is but one example.

The Court of Appeal considered the approach to be adopted to applications under CPR rule 3.1(2)(a), for an extension of time to serve a respondent's notice.

Salford had appealed a decision to stay a winding-up petition. On advice from counsel, no respondent's notice was filed, but newly instructed counsel took a different view, and so Altomart applied for an extension of time to serve a respondent's notice under CPR 52.5(2)(b). The notice was more than a month late, and in reliance on *Mitchell*, Salford opposed the application.

As the application was not one seeking relief from sanction, the Court of Appeal was required to consider whether *Mitchell* principles where applicable at all. Finding that the application for permission to appeal out of time was analogous to an application under rule 3.9, the appeal court held that the application should therefore be decided in line with the same principles, holding that the '*Mitchell* principles therefore applied with equal force to an application for an extension of time'.

The Court of Appeal then considered (i) the delay (36 days); (ii) the appeal would not be heard for some months (iii) Salford would not suffer any undue prejudice if the extension was granted.

Finding that the delay could not be described as a serious or significant breach of the rules, and that there was nothing else in the conduct of the proceedings or more generally that militated against granting relief, the application was granted.

***Cutler v Barnet London Borough Council* – QBD – Supperstone J – 31/10/2014**

Within possession proceedings, an order for disclosure had been made against Ms Cutler, and when she failed to comply, the council applied for judgment and an order striking out her defence for non-compliance. An unless order was made for the disclosure to be provided within 14 days, and subsequently the judge found that the disclosure provided had been incomplete. During the course of the hearing, Ms Cutler made an oral application for relief from sanctions, but the judge found that any such application had to be filed formally under CPR pt 23. This had not been done, and so he had no power to consider it, and no discretion to grant relief. Ms Cutler was debarred from defending the claim.

The issue before Supperstone J was whether the judge had had discretion to consider an application not formally made in writing.

Finding that nothing in CPR rule 3.8 nor rule 3.9 required the application to be made in writing, it was held that the judge had had