Case No: PT-2023-000327

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date of hearing: Wednesday, 29 May 2024

IN THE ESTATE OF PHYLLIS KNOPP (deceased)

Before:

DEPUTY MASTER FRANCIS

- -

Between:

CORINNE HILARY BERGER	**Claimant**
- and -	
SHARON JOY SCHUMAN	**Defendant**

- -
- -

MR OWEN CURRY (instructed by **Withers LLP**) for the **Claimant**.

THE DEFENDANT appeared in Person.

- -

Approved Judgment

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DEPUTY MASTER FRANCIS:

1. I am now going to give judgment on the outstanding costs questions, and I am going to start by just setting out briefly some of the background and a summary of the proceedings to date.

2. The claimant and the defendant are sisters, the daughters of Phyllis Knopp, who died on 22 January 2021. Mrs Knopp died without having left a will with the result that her residuary estate passed to the claimant and the defendant in equal shares. The claimant and the defendant were appointed joint administrators of her estate by grant of letters of administration on 23 February 2022.

3. The principal asset in the estate comprised Mrs Knopp's former dwelling, a flat at 9 Haddon Court, London NW9. The current proceedings were brought by the claimant under CPR rule 64.2 to obtain the directions of the court in relation to two matters of controversy arising in the administration of the estate.

4. The first issue concerned the estate's entitlement to funds of £40,625 held in a Barclays account in the name of the defendant. That sum had been included in the IHT400 signed by the claimant and the defendant as an asset of the estate, but the defendant had subsequently stated that those funds were, in fact, her own monies, to which the estate had no interest.

5. The second matter of controversy arose in relation to the sale of the flat at 9 Haddon Court. The claimant said that the sale was being delayed due to the defendant's insistence that it be marketed at too high a price and her refusal to follow professional advice of the agents in relation to that. As a result, the claimant sought an order that she should have conduct of the sale.

6. Those proceedings were issued on 24 April 2023 and the claimant made a first witness statement on that date in support of them. The defendant subsequently filed an acknowledgment of service stating her intention to contest her claim. She did not, at that stage, file any evidence in opposition.

7. On 23 June 2023, Deputy Master Lampert made an order listing the case for a directions or a disposal hearing with directions for the defendant to file any evidence in opposition by 10 July 2023. On 7 July 2023, the defendant filed what appears to be a further acknowledgment of service together with an unverified statement some 36 pages long setting out her opposition to the claim at some length. In response to that, on 24 July 2023, the claimant made a second witness statement bringing the court up-to-date and answering some of the points made by the defendant.

8. On 2 August 2023, the matter came before Master Brightwell, and he made an order on that date dealing with the separate aspects of the claim as follows. First of all, he granted permission for the defendant to rely upon her statement of 7 July 2023, although it was not verified by a statement of truth. In relation to the question as to conduct of the sale, he granted the claimant the relief in the terms she was seeking, and he gave her conduct of the sale and provided that the flat should be sold with vacant possession. The claimant was given conduct of the sale up to the point of exchange of contracts on

terms, in effect, that the claimant keep the defendant fully informed of offers which were made.

9. In relation to the question as to the estate's entitlement to the funds in the Barclays account, the Master made an order requiring the defendant to disclose relevant bank statements by 22 September 2023. In a recital to the order, the Master recorded that it would be appropriate for the case to be transferred to the County Court at Central London following disposal of the question regarding the sale of 9 Haddon Court for the remaining matters, which concerned the question of the estate's entitlement to the funds in that account, to be determined. In relation to costs, Master Brightwell simply reserved the costs, and those are the costs which are to be dealt with today.

10. Following that hearing, the flat was subsequently sold to the defendant herself as a result of her matching an offer which had been made by a third party purchaser for the flat in October 2023. That sale was, in due course, completed and, following completion, there remained outstanding three questions for determination by the court in relation to the sale; first of all, whether the claimant was entitled to be indemnified by the estate for the estate agent's fees arising in respect of the sale, secondly, whether the claimant was entitled to be indemnified by the estate for the fixed fee charged by the conveyancing solicitors in relation to the sale and, thirdly, in relation to additional fees which were charged by the conveyancing solicitors as a result of the defendant's intervention in the sale which resulted in the property being sold to her, whether those additional sums should be paid by the defendant personally or, in any event, whether the claimant was entitled to be indemnified from the estate for those additional costs.

11. I decided those issues at the hearing on 10 May 2024 largely, but not exclusively, in the claimant's favour, and that left outstanding the question of costs of the proceedings, on which I heard submissions, but there was insufficient time on the day for me to give judgment.

12. As regards the question of the estate's entitlement to funds in the Barclays account, the second aspect of the claim, following the order of Master Brightwell for disclosure, on 15 September 2023, the defendant wrote to the claimant's solicitors indicating that she no longer wished to contest that part of the claim. Having so written, however, she shortly afterwards changed her mind and, on 21 September 2023, she gave disclosure of the bank statements as had been ordered by Master Brightwell.

13. Following disclosure of those statements, it became apparent to the claimant's solicitors that the estate's claim, if any, to the sums in the Barclays account was likely to be limited to a sum of £19,465. On 22 November 2023, the claimant's solicitors, Withers, wrote to the defendant to inform her that, in the circumstances, the claimant was prepared not to pursue the question of the estate's entitlement to that lesser sum, in effect, conceding that the administration should proceed on the basis that the estate had no entitlement to any sums in that Barclays account.

14. As a result of that, the only matter outstanding in relation to that aspect of the claim for determination by the court was likewise the question of costs. Again, I heard submissions in relation to that, but there was insufficient time to deal with it on the day, on 10 May.

15. In relation to costs, on behalf of the claimant, Mr Curry invites me to make two separate but related orders; first of all, an order under CPR rule 46.3 confirming that the claimant is entitled to be indemnified from the estate for her costs of the claim as a whole insofar as those costs are not ordered to be paid by the defendant or anyone else personally and, secondly, an order that the defendant should pay the costs or at least part of the claimant's costs of these proceedings to be assessed on the standard basis. A personal costs order is sought by the claimant against the defendant on the basis that the claimant says that she has been the successful party in the proceedings, and on the basis that the defendant brought the litigation upon herself and made the litigation substantially more protracted and difficult due to her conduct in the litigation.

16. On the defendant's part, she resists any costs being payable out of the estate or against her personally. She says, in effect, that the proceedings were unnecessary, that the claimant acted unreasonably in bringing the proceedings and that the claimant and her solicitor acted unreasonably in the way they pursued the proceedings, including in the period after conduct of the sale had been given to the claimant. She says that the result of that is that the claimant should be deprived of her right of indemnity out of the estate for the costs of the proceedings and, in any event, the defendant says that she should not be personally liable for any of the claimant's costs, either in relation to the question relating to conduct of the sale or in relation to the question as to the estate's entitlement to the sums in the Barclays account.

17. Before considering those submissions further, I should just refer to the Civil Procedure rules; first of all, rule 46.3, which embodies the more general principle relating to a trustee or personal representative's costs. Rule 46.3 states that:

> "This rule applies where a person is or has been a party to any proceedings in the capacity of trustee or personal representative and rule 44.5 does not apply."

In those circumstances, subrule (2) says that:

> "The general rule is that that person is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate."

Then subrule (3) says:

> "Where that person is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis."

18. Rule 46.3 is supplemented by paragraph 1 of the practice direction to part 46. That paragraph says as follows:

> "A trustee or personal representative is entitled to an indemnity out of the relevant trust fund or estate for costs properly incurred. Whether costs were properly incurred depends on all the circumstances of the case including whether the trustee or personal representative –
>
> (a) obtained directions from the court before bringing or defending the proceedings;

> (b) acted in the interests of the fund or estate or in substance for a benefit other than that of the estate, including the trustee's own; and
>
> (c) acted in some way unreasonably in bringing or defending, or in the conduct of, the proceedings."

At 1.2:

> "The trustee is not to be taken to have acted for a benefit other than that of the fund by reason only that the trustee has defended a claim in which relief is sought against the trustee personally."

As I say, that rule and the practice direction reflect a broader principle under the general law.

19. So far as any costs to be ordered personally against the defendant are concerned, the relevant provision of the CPR is rule 44.2. 44.2 provides, so far as relevant, that the court has a discretion as to whether to the costs are payable by one party to another, as to the amount of those costs and when they are to be paid. At (2):

> "If the court decides to make an order about costs, the general rule is that unsuccessful party will be ordered to pay the costs of the successful party; but (b) the court may make a different order."

Then at subrule (4):

> "In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
>
> (a) the conduct of all the parties;
>
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
>
> (c) any admissible offer to settle made by a party which is drawn to the court's attention."

Then at subrule (5):

> "The conduct of the parties includes –
>
> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
>
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
>
> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

> (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim."

20. In deciding the question of costs, I have had regard to the three witness statements which have been made by the claimant in these proceedings, the defendant's statement of 7 July 2023 with the enclosures to that, the defendant's letters to the court dated 15 April 2024, 29 April 2024 and 30 April 2024 and the defendant's skeleton argument provided for the hearing on 10 May, which was, in itself, a 24 or a 26 page document which set out extensively the defendant's position.

21. In order to keep this judgment within manageable length, I shall not refer to everything which is said in those statements, still less the large volume of documents exhibited to those statements. It is right to say that, for the purposes of forming the views I have, I have had regard principally to the correspondence passing between the parties which provides a reliable account of what, in fact, happened. In the course of this judgment, I shall refer to a limited number of such letters and correspondence and emails. I shall not refer to them all. I will refer to what I regard as the key items of correspondence, but I have had regard to the correspondence in general.

22. I shall deal, first of all, with questions of costs arising in relation to the issue relating to the question of conduct of sale. In order to reach a conclusion on where costs should fall in relation to those parts of the proceedings, it is necessary to set out in some detail a chronology of relevant events and correspondence, and that chronology starts off on 21 July 2021 when probate valuations were obtained of the flat from three agents in sums of £600,000, £610,000 and £620,000.

23. One of those agents, Winkworth, was subsequently appointed as selling agent for the flat in February 2022. That was the defendant's choice of agent. The property was placed on the market at an asking price of £670,000, and again that was at the defendant's insistence and was above the agent's own recommendation as to asking price, which was £650,000.

24. At this early stage, the claimant in correspondence expressed her concern that the defendant was acting unilaterally without consulting her and was asking too much for the flat contrary to professional advice. In response, the defendant said that she was just acting in the best interests of the estate to maximise sale proceeds. The property was placed on the market and there were a limited number of viewings.

25. On 20 October 2022, the asking price was reduced to £650,000. Again, at this stage, it is apparent from the correspondence that the agent, Winkworth, recommended a reduction to £630,000. The claimant wished to follow the agent's advice. The defendant in correspondence insisted that it should not be reduced below £650,000.

26. On 14 November 2022, the agent wrote to both parties and he said this:

> "The property was valued in 2021 by myself in a letter dated 21 July 2021 suggesting that the price in January 2021 for the property was £600,000, so I believe you needed a backdated valuation at the time. The property then came on in what I can only call a worse market on 22 February 2022 at a price of £675,000, a price I recommended not to start with and had

> always thought it should be £650,000 and no more than this as I was worried that there would be no interest or not the interest that there should be for a property as large as yours. The market is now in an even worse place, especially for downsizers. I can only go by what I see selling and that is unfortunately not a lot at all. The price I would recommend currently would be between the £600,000 and £625,000 mark as we are reaching an even quieter part of the year. We are constantly offering the property and not leaving a stone unturned to try and find that buyer. However, we just face many obstacles in the way. Currently, interest rate increases mixed with high costs of living are meaning less and less people looking to buy, which in turn means there will not be as many people selling unless they have to, which creates a turbulent market. I just want to be as honest with you both as possible. There is no point in me saying a certain price if I am not too confident that it can be reached. This does not help anyone and we are all working towards the same goal."

27. The defendant's response to that she explains in paragraph 14 of her skeleton argument. She says she does not believe that Winkworth's advice was correct, which is why she did not agree to their recommendation, so the property remained on the market for £650,000.

28. On 22 November 2022, the agent informed the claimant and the defendant that a Mrs Cooper had indicated that she was willing to offer £615,000 for the flat, subject to finding a buyer on her property which, the agent explains, they hoped to very soon. In response to that, the claimant emailed the defendant and the agent and said she thought that was a fair offer. She asked the agent whether he could seek an increase in the offer price to £625,000. The agent explained that he then spoke with Mrs Cooper and was told that she may be willing to increase to £625,000, but she first wanted to show the flat to her builder.

29. On 23 November 2022, the defendant gave her response. She said she did not agree that £625,000 is a fair offer or indeed any offer at all. She maintained that the property should remain on the market at the asking price of £650,000 and that it was worth more than £625,000. She also then stated that she did not believe that the current agents were willing to pursue a sale of the flat at a proper price and she, therefore, proposed that the sale should be moved to another agent.

30. It was in that context that, on 13 December 2022, Withers, acting for the claimant, wrote a letter before action to the defendant setting out the claimant's complaint that the flat had received little interest because the asking price was too high and that the defendant was refusing to follow professional advice. In that letter, Withers gave the defendant what was, in effect, an ultimatum that she should agree to considering offers in the region of £625,000 or less and, if Winkworth advised that the market had deteriorated, she should follow Winkworth's advice and she should only reject any offer received if she could identify objectively sound reasons for doing so.

31. On 6 February 2023, the defendant responded to that letter. In her response, she doubled down on her assessment that Winkworth was underperforming in relation to its marketing of the property. She enclosed with the letter letters containing advice

from other agents that the property should be relisted at an asking price of £650,000 and she proposed instructing Dexters estate agents in place of Winkworth.

32. In response to that, on 8 February 2023, the claimant, through Withers, stated that she would agree to Dexters' appointment in place of Winkworth on various conditions, which were set out and, in effect, those conditions were that both the claimant and the defendant should follow Dexters' professional advice:

> "… including if that is to reduce the sale price, unless either of you produces written professional advice as to why you should not to do so (it is not reasonable to reject the agent's advice on the basis of a personal belief that the flat will sell for more).
>
> You and Mrs Berger agree to consider all offers which Dexters consider credible and only reject an offer if you identify objectively sound reasons for doing so (it is not reasonable to reject an offer because the offeror is part of a chain)."

33. Those were the conditions set out by the claimant. Following that, Dexters were appointed in place of Winkworth on 21 February 2023 for an initial period of 15 weeks. That firm then prepared draft sale particulars and, it appears, contacted registered buyers which they held on their books before the flat was put on the website and went "live", as such.

34. On 5 April 2023, Dexters wrote to the claimant and the defendant explaining that they had not received any interest at the proposed price of £650,000 and they advised that the launch price should instead be £600,000. The claimant responded to that saying that she wished to follow that advice. Once again, the defendant stated that she disagreed and she considered that the market should be tested again at £650,000.

35. In response to that, Dexters then wrote to the parties on 6 April 2023 – this is Felix Brown from Dexters and, in fact, it was addressed to the defendant, but the claimant was copied in – explaining that:

> "The market between 2020 and now has changed somewhat with regards to the recent hike in interest rates, which is having an impact on buyers securing better mortgage products.
>
> "Of course, it is in our best interest to explore the market in achieving the best possible price, but equally we have an obligation to give the best advice for the best possible outcome. By re-listing at the same price where the previous agent had no success is counterproductive. As myself and the team have already explored our registered buyer between £600,000 to £700,000 with no success.
>
> By listing at £650,000 and then having reduce the price online sends the wrong message to potential buyers. We believe this is the best approach in creating more activity. Hopefully it would generate more competition with buyers and our six negotiators in pushing the buyers to their limit."

36. So, again, similar to the advice which had been received from Winkworth back in December, the new agent was giving clear advice as to the way in which the property should best be put back on the market in order to attract interest and, again, the defendant refused to countenance that advice. A standoff, as a result, emerged where the defendant would not agree to any reduction in line with that advice, but the claimant wished to follow the agent's advice. The defendant indicated that she was only prepared to reduce the asking price to £625,000.

37. As a result, on 21 April 2023, Dexters went live with the marketing of the property at £625,000, but, almost at the same time, the claimant issued the present claim seeking an order that the claimant should be given conduct of the sale of the flat. This was based upon the defendant's own failure, as the claimant saw it, to abide by the commitment which she had given as a condition of the claimant agreeing to Dexters being appointed in place of Winkworth that both of them would follow the professional advice given by the agents.

38. Pausing there, having set out that history of the marketing of the flat in the period up to the issue of proceedings, I should set out my conclusions in relation to the question, first of all, of whether it was reasonable for the claimant, as co-administrator of the estate at this stage, to have issued the claim seeking the directions of the court in relation to the sale and that she be given conduct of the sale.

39. In my judgment, having regard to the history as it is manifest in the correspondence, it was entirely reasonable for the claimant to have sought the direction of the court in relation to the sale of the flat. I reject the defendant's assertion that it was unnecessary or unreasonable for the claimant to have sought the assistance of the court as one of the joint administrators in circumstances where it is clear that the claimant and the defendant were in continuing disagreement as to how the flat should best be marketed and in circumstances where the claimant wished to follow professional advice in that respect and where, in contrast, the defendant did not accept the professional advice as being correct and was not prepared to follow it. In those circumstances, in my judgment, it was inevitable that the claimant would have to seek the directions of the court in relation to the sale.

40. Picking up the chronology then following the issue of proceedings, the flat remained on the market at the asking price of £625,000. The claimant wished to reduce the asking price to £575,000 in line with advice which was given by Dexters in an email on 8 June 2023. The defendant refused to reduce the price below £590,000.

41. On 16 June 2023, an offer was received for the flat from a Mr James for a sum of £577,000. Again, Dexters advised that that offer should be given serious consideration. Again, the claimant wished to accept it. On the defendant's part, after some days of not responding, on 20 June 2023, the defendant made an offer herself to buy the claimant's interests in the property for a sum of £275,000, in effect, making an offer for the flat as a whole of £550,000, below the price offered by Mr James.

42. On the same day, Dexters reiterated their advice, which was that Mr James's offer should be accepted and, on the same day again, the defendant wrote again increasing her buyout offer to £285,000, equivalent to £570,000 for the flat as a whole. In response, the claimant said that she would agree to that if the defendant could provide

evidence of funding for the buyout and was able to commit to completion within a two week period.

43. After that, there was no further response from the defendant until 13 July, when the defendant wrote to say that she wanted to buy the property, but it would take a while for her to be able to complete. In the meantime, Dexters stated their concern that Mr James was being kept waiting, he would not be prepared to wait indefinitely and may make an offer elsewhere. It was in that immediate context that Master Brightwell considered the matter on 2 August 2023 and made the order which he did giving conduct of the sale thereafter to the claimant.

44. To complete the history, following the hearing on 2 August 2023, the claimant then sought to accept Mr James's offer, as Master Brightwell had expressly directed she could. In response, on 7 August 2023, Mr James stated that he was reducing his offer to £550,000 and citing as the reason for that the rise in interest rates. The following day, the claimant wrote to Dexters asking if they could make a counteroffer of £563,500, in effect, splitting the difference between Mr James's initial offer and his subsequent offer.

45. The defendant has in the submissions she has made to me criticised the claimant for this. She says that the claimant, in insisting on a counteroffer rather than accepting Mr James's reduced offer, was not following Dexters' advice. In the event, Mr James did not then come back in response to that counteroffer and his interest appears to have fallen away.

46. Following that, on 13 September 2023, on Dexters' advice, the asking price was reduced to £525,000. On 20 September 2023, an offer was received for the flat in the sum of £485,000 from a cash buyer. The claimant followed Dexters' advice to accept that offer. Dexters managed, however, to negotiate the price up to £498,000. Solicitors were then instructed and then, on 17 October 2023, the defendant wrote to Dexters to inform them that she was in funds herself to buy out the claimant at a matching price. Following that, the claimant agreed to give the defendant the opportunity, once again, to buy her out at that matching price whilst seeking at the same time not to lose the third party purchaser.

47. There was then a period during which solicitors, Withers, were involved in conjunction with the conveyancing solicitors dealing with a number of matters which arose, including regulatory matters relating to verifying the source of funds and money laundering issues which arose because the defendant did not herself have conveyancing solicitors and was acting in person. Contracts were exchanged on 25 October 2023 and completion took place on 23 November 2023.

48. Having set out at some length that history, I come now to deal with my conclusions in relation to the costs of that part of the proceedings. I have already indicated my provisional view that the claimant was justified and was acting properly in bringing the claim, so far as it related to conduct of sale of the flat. In my judgment, not only was she justified in bringing the claim, but she was also properly justified in pursuing the claim to a hearing on 2 August 2023.

49. As I have set out in recounting the history of this, the defendant in the intervening period continued to act in a manner which frustrated the sale of the flat with the result that Mr

James's original offer of £577,000 could not be accepted, despite Dexters' clear advice that it should be and its warning of the risk that the offer may otherwise be lost. In her submissions, the defendant says that she never rejected that offer. But, in my judgment, by failing to state her acceptance to the offer, she left the claimant in exactly the same position as she would have been had she expressly refused the offer. Moreover, it is apparent, in my judgment, that the defendant in stalling in relation to Mr James's offer was seeking to pursue her own interests in making her own offer to buy out the claimant of the flat at a price which was below that offered by Mr James.

50. In those circumstances, I am satisfied that Master Brightwell's order of 2 August 2023 giving the claimant conduct of the sale was one which was entirely justified. So far as costs are concerned, they were reserved by Master Brightwell, but I am satisfied, first, that the claimant is entitled to be indemnified out of the estate for her costs incurred in relation to that aspect of the claim and, second, in my judgment, it is right that the defendant should be personally ordered to pay the claimant's costs of that element of the claim up to the date of Master Brightwell's order for three reasons under CPR rule 44.2.

51. First of all, I am satisfied that the claimant was the successful party in relation to this aspect of the claim. She obtained the relief which she was seeking in relation to conduct of the sale. Secondly, she was successful in the face of the defendant's opposition. Thirdly, the defendant's conduct in repeatedly refusing to follow professional advice up to and including her failure to accept Mr James's offer, in my judgment, was unreasonable, contrary to the interests of the estate and indeed contrary to the commitment which she herself had given to the claimant. For those reasons, it is an appropriate case that the defendant should pay the claimant's costs personally of that aspect of the case.

52. I should finally in relation to this just say something about the costs which have been incurred in the period since the 2 August hearing. In relation to this period, the defendant herself brings the charge against the claimant that the claimant is herself guilty of the same type of conduct of which the claimant makes complaint of the defendant in, she says, unreasonably failing to follow Dexters' advice to accept Mr James's revised offer of £550,000, which the defendant says resulted in a loss to the estate. She says that the claimant failed to follow the assurance which had been given by her own barrister to Master Brightwell that she would follow professional advice. She also contends that the claimant failed to act promptly to reduce the official asking price following the 2 August hearing. The property remained on the market for some days or weeks thereafter at £625,000, and she says that Dexters themselves acted unreasonably and unprofessionally and gave poor advice during this period. For those reasons, the defendant contends that the claimant should not be entitled to an indemnity from the estate in relation to at least that period.

53. In my judgment, there is, on proper enquiry, nothing in any of these criticisms which are made by the defendant. In my judgment, the claimant was not acting unreasonably in seeking in the way in which she did to test Mr Jones's offer. It is apparent that Dexters' own view was that Mr James's loss of interest in the property was not so much as a result of the counteroffer which had been made, but as a result of the previous two month delay following the making of his original offer. Moreover and in any event, for the defendant to suggest that this resulted in a loss to the estate is a submission which is unsustainable in circumstances where the defendant herself has taken the opportunity

to buy out the claimant at a price matching that made by the ultimate offeror. In fact, the defendant has herself thereby benefited from being able to buy out the claimant's interests at a price significantly below that which she had previously offered when she was acting in competition with Mr James.

54. My conclusion, therefore, is that the claimant in this period should not be deprived of her further costs out of the estate by reason of any conduct issues. Moreover, insofar as the costs after the 2 August hearing are costs which are properly litigation costs, in my judgment, those are costs which the defendant should pay the claimant insofar as there remained as outstanding issues in the litigation the three issues which I identified earlier in this judgment, which the defendant resisted and which had to be dealt with at the hearing on 10 May.

55. So far as the costs of the litigation which relate to the question as to the conduct of the sale, I will make an order provisionally, subject to the adjustments which I shall come on to in due course, that the defendant should pay the claimant's costs of the litigation and otherwise the claimant should be entitled to those costs out of the estate.

56. Having dealt, therefore, with the first of the two questions with which this litigation is concerned, I come on to the second question, which concerns the estate's entitlement to funds which were held in the Barclays account. Again, it is necessary to set out the chronology of events to explain the decision which I come to in relation to this.

57. That chronology starts on 21 May 2021 when Withers wrote to the defendant in the context of a dispute which had already arisen between the claimant and the defendant relating to commencing the administration of the estate. Withers asked the defendant to provide a list of assets and liabilities of the estate, and that request was made in the context of a threat, if the defendant refused to cooperate, that the claimant would apply for her to be removed as an administrator.

58. In response to that letter, the defendant instructed the firm of VWV, who, on 17 June 2021, wrote to Withers and, amongst other things, they provided a schedule setting out the assets and liabilities of the estate. Included within that schedule, there were listed three Barclays bank accounts. The first of those Barclays bank accounts was the account ending in number 1476 with stated funds there in of £40,265. That is the account with which these proceedings are concerned and, at this early stage, VWV on the defendant's behalf made the clear statement that this was an asset of the estate.

59. Subsequent to that, the claimant and the defendant were able to agree to the appointment of Pearlmans as solicitors to act in the administration of the estate and the matter was taken over by a Mrs Franklin of that firm. On 5 October 2021, Mrs Franklin sent an email to the claimant and the defendant following a meeting which she had had with the defendant the previous day and she said in that email:

> "Thank you also for bringing in the attached printout for Barclays account number ending 1476 which is in your name. You confirmed that the funds were your mothers and were transferred from the joint accounts you held with her. They therefore form part of her estate for inheritance tax purposes."

60. Following that, Mrs Franklin prepared the IHT400 and, in that IHT400, in box 76, she stated as an additional asset of the estate:

> 'Barclays Bank account in name of deceased's daughter Sharon Schuman. Transferred from joint bank account held by deceased and her daughter and funds provided entirely by deceased. Balance £40,265."

61. She prepared that in draft and, on 12 October, she wrote to the claimant and the defendant enclosing that draft with a number of questions. At question 9, she asked:

> "With regard to the Barclays account in your name, Sharon, this does not fit into any other category. I have included the value in box 76 of the ITH400 and given an explanation on page 16. Please confirm that this is correct."

In response to that, on 22 October, the defendant emailed Pearlmans to state in relation to that that that was correct.

62. There matters lay until 5 August 2022, when Mrs Franklin emailed the claimant and the defendant advising that she was treating the funds in that account as an interim distribution to the defendant and that she would, therefore, make an equivalent interim distribution to the claimant. That email triggered the defendant into action and she protested at this.

63. On 10 August 2022, Mrs Franklin sent an email to the defendant, copying in the claimant, following a meeting which had taken place the previous day. I am not going to quote the whole email, but she said amongst other things:

> "You also advised me that not all the funds were in fact your mother's, but your own funds were also in the account. If the account did include your own funds, please let me have evidence as a corrective account will need to be submitted to HMRC and the final distribution to you and Corinne will need to be adjusted to take this into account."

64. Following that request, Mrs Franklin sent three further chasing emails to the defendant on 6 September 2022, 14 September 2022 and 3 October 2022. On 26 October 2022, the defendant replied. She said this:

> "Sorry for the delay in sending this email. I was the joint holder with my mother and all my mother's Barclays accounts. I only moved money from the joint accounts into another account because Corinne had unbelievably managed to block two building society accounts. My mother was livid and so upset at what her daughter had done behind her back that she told me to do something about it, so that is when I moved her money into another account so she could still access her funds. So far as my mother and myself are concerned, the funds in that account were to be treated in the same way as they had always been; i.e. passed

> to me by survivorship on her death. Therefore, Corinne is not entitled to receive any of this money."

65. On 29 November 2022, the defendant wrote again to Mrs Franklin and she explained in this email, as regards the account ending 1476:

> "I made a mistake when I said that this account formed part of the estate and I retract that. When I looked thoroughly through all my different accounts again, I realised that I had given that account ending 1476 in error. 'Sharon Schuman re PK' was one of my nicknames so that I could differentiate between all my different accounts. As per your telephone conversation on 9 September 2021, Barclays informed you that the account ending 1476 was not, in fact, my mother's account. On 20 November 2021, Barclays confirmed the following in writing to you. 'Please be advised that our late customer has no previous or existing connection to account ending 1476.' Please can the HRMC form be amended. Sorry for the confusion that this has caused."

66. Finally in this chain of correspondence, on 17 March 2023, the defendant wrote to Withers in response to emails which Withers had sent. In relation to the Barclays account, she said this:

> "I have to keep repeating that the account 'Sharon Schuman re PK' was just the name of one of my various accounts that I have with Barclays. I have stated that in previous emails. I kept giving this account details in error. Finally, I messaged Sarah at Pearlmans Solicitors dated 29 September 2022 to inform her of my mistake and confusion and I retracted the information that I had previously given as regards to that account. I am confirming once again that this Barclays account ending 1476 is my account with my own money in it."

67. I have gone through those series of emails because, in my judgment, the explanations which are given by the defendant in the course of those emails are inconsistent. She had stated at one time that the funds were transferred from her mother's joint account to her own account so that her mother could access then, but, in another breath, she states that the monies are own. The difficulty for the claimant was that different and inconsistent explanations were being given without there being any independent verification of precisely the position.

68. In those circumstances, in my judgment, it was perfectly reasonable for the claimant to seek the directions of the court as to the question as to the estate's entitlement to the funds in the account. That was a question which concerned her as administrator and also as beneficiary. It was also a question which was relevant to the estate's accounting to Her Majesty's Revenue & Customs for inheritance tax in circumstances where the estate, at that stage, was believed to be above the relevant thresholds.

69. In all of those circumstances, I am satisfied that the claimant was not acting unreasonably and should not be deprived of her costs of this aspect of the claim from

the estate on the basis that the usual rule under rule 46.3 should apply and there are no proper grounds for finding that she should be deprived of those costs. However, I am not satisfied that the defendant should be personally liable for any of the claimant's costs of this aspect of the claim. My reasons for that are as follows.

70. First of all, I reject the suggestion made by Mr Curry that the claimant should be treated as the successful party in relation to this aspect of the claim. The claimant was successful only to the extent of obtaining an order in the course of the litigation requiring the defendant to disclose bank statements. In the light of those statements, the claimant has concluded – she says, for commercial reasons – not to pursue this aspect of the claim further. That is her commercial decision and, no doubt, it was one which, in all the circumstances, was a sensible one to make. But, in my judgment, it is not right in those circumstances that the defendant should have to pay the costs of that aspect of the claim personally, at least without the courts having reached any adjudication on the substance of that part of the claim.

71. It is right that the defendant has not helped herself in the confusing and conflicting information that she has provided in relation to funds in the account and it is also right that the defendant only provided disclosure of the accounts which clarified the situation after an order had been made by the court. However, it is far from clear that the claimant would have been successful in her claim on behalf of the estate, even to the extent of the sum of £19,425 representing the balance of the funds transferred from the joint account as now identified by reference to the statements. Whilst I, as I have already said, accept that the claimant was properly and reasonably entitled to seek the court's assistance and directions in relation to this question as a result of the confusion which had arisen and in light of the consequential issues which arose in relation to accounting to the tax authorities properly, it does not follow, in my judgment, that the defendant should personally be ordered to pay any of those costs.

72. Finally, in this respect, I have been asked to consider and should refer to a letter written by Withers on 21 July 2023 on without prejudice save as to costs terms and which Withers wrote to the defendant stating that the claimant was prepared to agree to an order whereby the defendant kept the funds in the account and the claimant would not seek the costs which she has incurred in relation to the account from the defendant personally. They said:

> "In turn, you will need to accept that Mrs Berger will recoup those costs from the estate. In effect, they will be shared between yourself and Mrs Berger as opposed to your paying personally."

73. Mr Curry says that, in the light of that letter, the defendant should have accepted that letter and I should take that into account in determining questions of costs. I do not consider that this letter assists the claimant materially. I do not consider that, simply because the claimant offered to drop this aspect of the claim on terms that she be entitled to the usual indemnity out of the estate but not seek costs from the defendant personally, it should make any difference to the costs order which I now make, which is, in effect, on the same terms, on the basis that the defendant did not accept that offer. In my judgment, there was no reason why the defendant should be penalised for failing to accept that offer and nor is there any principled basis upon which I should make any different order in relation to costs, having made the findings I have in relation to that aspect of the case.

74. So, in conclusion, I hold that the claimant is entitled to the usual order that her costs of the claim be paid out of the estate under rule 46.3 to the extent that such costs are not recovered from the defendant personally. Secondly, I hold that the defendant should pay the claimant's costs of the claim so far as they relate to the relief sought in relation to the question as to conduct of the sale of the property. But, in contrast, I decline to make any order that the defendant pay personally any of the costs of the claim so far as they relate to the question as to the estate's entitlement to funds in the Barclays account.

75. In those circumstances, I make a partial costs order. Under CPR rule 44.2(6), there is provision for the orders which a court may make under this rule. Under subrule (f), the court may make an order in relation to costs relating only to a distinct part of the proceedings. Under subrule (7), where the court is considering making an order under that paragraph, it should consider whether it is practicable instead to make an order under paragraph 6(a) or (c); paragraph 6(a) provides that the court may make an order that one party pay a proportion of another party's costs, and paragraph 6 (c) provides for an order for costs from or until a certain date only.

76. I consider that it would be inappropriate for a costs draftsman to have to carry out an assessment on a standard basis seeking to distinguish between costs incurred in relation to the conduct of sale issue as opposed to costs relating to the Barclays account issue and that, if it is possible to do so, I should instead consider making an order that the defendant pay a proportion of the claimant's costs to be assessed on the standard basis.

77. In that respect, I am assisted by a letter written by Withers to the court, included in the bundle, in which they have considered the question as to apportionment of the costs of the litigation between the two aspects of the claim, and they have stated that the apportionment, in their view, is 60 per cent relating to the order for sale or conduct of sale and 40 per cent relating to the Barclays account.

78. From my consideration of the papers as a whole and the correspondence, that seems to me to be as fair and reasonable assessment of the relevant apportionment and, in the circumstances, I have concluded that the right order to make in this case in respect of the defendant's personal liability for costs is that the defendant should pay the claimant 60 per cent of her costs of the claim to be assessed on the standard basis, and I will accordingly make an order in those terms. That is my judgment.

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(This Judgment has been approved by the Judge.)