JUDGMENT : HIS HONOUR JUDGE PETER COULSON QC: TCC. 6th January 2006.

Introduction

1. On Monday, 19th December 2005 I gave judgment in favour of the claimant in the sum of £46,241.71 on the claim, less £8,465 on the counterclaim, making a total of £37,781.71 together with interest. Happily, interest has been agreed by the parties in the sum of £6,000, making a total judgment sum in favour of the claimant of **£43,781.71**.

2. Arising out of that judgment, there are three issues that now arise. First, there is the question of costs: the defendant seeks its entire costs of the action, whilst the claimant seeks an order that the defendant should pay some of its costs and, further, that most of the rest of the defendant's costs should be borne by the defendant himself. Secondly, if I grant the defendant some or all of its costs, the defendant seeks to have such costs assessed on an indemnity basis, at least from 27th October 2004 onwards. Thirdly, there is an application by the defendant for a payment on account of his costs. This judgment is concerned with the first two issues only.

Relevant Events in respect of Costs

3. At paragraphs 168-171 of my judgment I referred to the defendant's offer of April 2004 to resolve the differences between the parties prior to the commencement of the litigation. The offer comprised three main elements:
   (a) the payment by the defendant to the claimant of the £73,994.03 due under the original contract,
   (b) the abandonment by the claimant of all claims for additional work,
   (c) the carrying out by the claimant of certain remedial works, which did not include any works in respect of the air extraction system in the basement, since at that stage this had not been identified as a problem.

4. I concluded that no binding agreement was reached on the basis of this offer. I also concluded that both parties would have been better off if the offer had been accepted by the claimant. It is plain that the consequences of non-acceptance are particularly unfavourable to the claimant because, not only did the claimant's claims for additional works fail for a whole raft of different reasons, and not only did certain items of the defendant's counterclaim succeed, but I also concluded that the sum of £27,752.32 fell to be deducted from the sums otherwise due under the original contract for the reasons set out in Section D of my judgment (paragraphs 35-76 inclusive). This was the argument about the true make-up of the contract sum.

5. After the commencement of the litigation, on 27th October 2004, the defendant made a payment into court of £50,000, to take into account both claim and counterclaim. It is agreed that, in the result, the claimant has not beaten this payment into court.

6. A year later, on 26th September 2005 the defendant increased the payment into court to £65,000. On any view, the claimant has failed to beat that second payment into court.

7. In the run-up to trial there was correspondence between the parties which contained a number of different offers. I have, for instance, seen the defendant's offer of 29th November which offered £70,000 inclusive of costs. Offers which are inclusive of costs are not in the form of a Part 36 payment or a proper without prejudice offer. I therefore make it plain that, in all the circumstances of this case, I have not given any weight to that correspondence when deciding questions of liability for costs.

Liability for Costs: The Relevant Parts of the CPR

8. The relevant parts of CPR 44.3 provide as follows:

"(1) The court has discretion as to -
(a) whether the costs are payable by one party to another;
(b) the amount of those costs; and
(c) when they are to be paid.

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

(4) In deciding what order (if any) to make about costs, the costs must have regard to all the circumstances including -

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of his case even if he has not been wholly successful; and

(c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Part 36).

(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 any pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issues;

(c) the manner in which a party has pursued or defended his case or a particular allegation or issue;

(d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.

(6) The orders which the court may make under this rule include an order that a party must pay –

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date…

(7) Where the court would otherwise consider making an order under paragraph 6(f) it must instead, if practicable, make an order under paragraph 6(a) or (c)…

(9) Where a party entitled to costs is also liable to pay costs, the court may assess the costs which that party is liable to pay …

9. The relevant parts of CPR 36 provide as follows:

CPR 36.6

"36.6(1) A Part 36 payment may relate to the whole claim or part of it or to an issue that arises in it.

(2) A defendant who makes a Party 36 must file with the court a notice which –

(a) states the amount of the payment;

(b) states whether the payment relates to the whole claim or part of it, or to any issue that arises in it and if so to which part or issue;

(c) states whether it takes into account any counterclaim; …

(e) if it is expressed not to be inclusive of interest, it gives the details relating to interest".

CPR 36.10

"36.10(1) If a person makes an offer to settle before proceedings are begun which complies with the provisions of this rule, the court will take that offer into account when making any order as to costs.

(2) The offer must –

(a) be expressed to be open for at least 21 days after the date it was made;

(b) if made by a person who would be a defendant were proceedings commenced include an offer to pay the costs of the offeree incurred up to the date 21 days after it was made; and

(c) otherwise comply with this Part".

CPR 36.11

"36.11(1) A claimant may accept a Part 36 offer or Part 36 payment made not less than 21 days before the start of the trial without needing the court's permission, if it gives the defendant written notice of acceptance not later than 21 days after the offer or payment was made".

CPR 36.20

"36.20(1) This rule applies where at trial a claimant –

(a) fails to better a Part 36 payment;

(b) fails to obtain a judgment which is more advantageous than a defendant's Part 36 offer …

(2) Unless it considers it unjust to do so, the court will order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without needing the permission of the court".

Liability for Costs: General Approach and Conclusions

10. The first question for me to decide is whether one party can be said to be the successful party in this litigation. I am in no doubt at all that the defendant can be fairly described as the successful party in these proceedings. There are three separate reasons for this.

Reason 1: The Offer of April 2004.

11. First, the claimant failed to beat the offer made by the defendant before the litigation started: see paragraphs 3 and 4 above. I can and indeed should take that offer into account pursuant to CPR 36.10 and CPR 44.4 (c). The offer is plainly admissible in accordance with these provisions of the CPR and the decision of the Court of Appeal in **Trustees of Stokes Pension Fund v. Western Power Distribution (South West plc)** [2005] EWCA Civ 854, reported at [2005] 1 W.L.R. 3595. The offer was in clear terms and the claimant's solicitor was able to advise her client about it. It was rejected, not because of any doubt about the consequences of what was being offered, but because the claimant company believed, erroneously as it turned out, that it could do better in litigation.

12. In the course of her closing submissions on behalf of the claimant Ms Jackson helpfully referred to the four features which, pursuant to the judgment of Dyson L.J. in **Trustees of Stokes Pension Fund**, a pre-action offer had to exhibit in order to be regarded as valid. Those four features were that:
    (i) the offer was expressed in terms which left no doubt as to what was being offered, including which parts of the claim it was intended to satisfy, whether any counterclaim had been taken into account, and what provision for interest was proposed;
    (ii) it was open for acceptance for at least 21 days;
    (iii) it was not a sham or non-serious offer; and
    (iv) it was made by a defendant who was clearly good for the money at the time the offer was made.

13. Ms Jackson accepted, as she was bound to do, that elements (i) and (iii) were both satisfied in the present case. However, she said the offer was not expressed to be open for 21 days and was made by a party who was not (or was arguably not) good for the money. Accordingly, she submitted that the offer made in April 2004 was not in accordance with Part 36, did not meet the test set out by the Court of Appeal in **Trustees of Stokes Pension Fund** and should not be an offer to which I have regard when assessing costs.

14. As to the point about 21 days, I refer to the judgment of Dyson L.J. at paragraph 24. He said, in the context of the offer being open for 21 days, that it had to *"accord with the substance of a Calderbank offer"*. In my judgment, this offer plainly achieved that. The offer here did not indicate that it was open for any period less than 21 days; indeed it was silent as to the period in which it could be accepted. It was therefore unqualified and unlimited as to the time for acceptance. There was certainly nothing about it which suggested that it would not be open for at least 21 days. It seems to me that, in those circumstances, it was a valid Calderbank offer. I also note that, in the evidence which I heard about this offer at the trial, nobody suggested that there was any problem or uncertainty as to how long the offer might be open for. Accordingly, for these reasons, I reject the first point raised by Ms. Jackson in respect of that pre-action offer.

15. As to the second point, namely whether the defendant was good for the money, I am bound to say that I do not consider that there is any evidence that could allow me to conclude that the defendant was or might have been somebody who could not pay the offer that he was making. I note that, at paragraph 27 of his judgment in **Trustees of Stokes Pension Fund** Dyson L.J. said: *"In my view the risk of such satellite litigation can be overstated. In reality, it would be difficult for a claimant who refused an offer to contend after a trial that the offer was not genuine or that the defendant was not good for the money unless he said that this was why he was refusing the offer at the time. In the absence of such a statement at that time, the court would be likely to infer that the reason for the refusal of the offer was simply that the claimant considered it to be too low. The best way for a claimant to test the genuineness of an offer and the defendant's ability to pay is to accept the offer or at least to do so conditionally on payment being forthcoming and see what happens. If this*

does not occur, it will be a rare case where a claimant will have any prospects of showing that the offer was not genuine or would not have been honoured".

16. In this case, somewhat unusually, I have heard evidence about the pre-action offer that was made. Indeed the claimant's director, Mr. Barrand, said in terms in his written statement that he rejected the offer because it was not enough. Specifically, he said he rejected it because it offered him nothing for his claim for additional works. He did not say that he rejected it because he thought that the defendant had no money. Indeed, within a month, he issued proceedings against the defendant, which, as I observed to Ms Jackson, was hardly the action of someone who believed that the defendant had no money.

17. Accordingly, it seems to me plain that the offer of April 2004 was a valid offer, and I should have regard to it in accordance with the principles outlined by the Court of Appeal in **Trustees of Stokes Pension Fund** and in accordance with CPR Part 36. Ms Jackson accepted, quite properly, that this was an extremely important point because it meant that the whole of the claimant's litigation from the outset was, in one sense, quite futile. The claimant has not recovered from this action what it had been offered by the defendant before the litigation commenced.

Reason 2: The Payments Into Court

18. Secondly, the claimant failed to beat the first payment into court of 27th October 2004 (paragraph 5 above) and wholly failed to beat the second payment into court of 26th September 2005 (paragraph 6 above). Again, therefore, in accordance with CPR 44.34 (c), the only conclusion I can reach is that the defendant was the successful party because the claimant failed to beat both of the two payments into court.

Reason 3: Success on Issues

19. Thirdly, I consider that the defendant was essentially successful on all the key issues at the trial. The claimant argued that, as a matter of principle, I should approach costs on an issue-by-issue basis, rather than dealing with costs on a more global basis. I am not necessarily persuaded that, in this case, that approach, without more, would be an appropriate exercise of my discretion, but assuming that it was, I would reach the following conclusions as to success and failure on the various issues:

(a) Original Contract Claim

The claimant's recovery under the original contract of £46,241.71 was less than the £73,000-odd claimed in the particulars of claim. The reason for that, of course, was that the pleaded claim fell to be deducted by the sum of £27,752.32 because of the defendant's successful allegation that there was a breach of contract relating to the make-up of the figure. To put the point in another way, the defendant accepted at trial that, under the original contract, the claimant would recover the figure of £46,241.71. It was the claimant who did not accept that and sought the full sum. The claimant was unsuccessful. Therefore, it was the claimant who lost on the claim under the original contract.

(b) Additional Work/Supplementary Agreement/Quantum Meruit

As previously noted, the principal reason why this litigation was commenced, and I believe the overwhelming reason why it was fought all the way through to the end, was because the claimant refused to abandon its claim for additional works. As Ms Jackson fairly conceded, that was a part of the case on which the claimant was wholly unsuccessful. Again therefore, on that part of the case, which was the second element of the claimant's claim, the defendant was the successful party.

(c) Counterclaim

As to the counterclaim, the defendant was successful. It is, of course, right that the defendant recovered less than the amount pleaded. It is also right that, on the principal item of the counterclaim, namely the air extraction system in the basement, the defendant was successful only on a relatively small part of the amount originally claimed. However, there was never any offer by the claimant in relation to the counterclaim (or any part of it). Further, given that the counterclaim was opened in the maximum sum of about £27,000, it seems to me that the defendant's success, to the tune of £8,460, means that I should conclude that the defendant was the successful party in respect of the counterclaim.

20. In a nutshell, on the three main issues in dispute, namely the amount due under the original contract, the amount due under the alleged supplementary agreement/quantum meruit claim, and the counterclaim, the claimant lost and the defendant won. Moreover, although the defendant lost on the issue as to there having been a compromise in April 2004, I have already pointed out that the claimant would have been much better off if it had in fact accepted the defendant's offer and compromised the claim in the terms offered.

Liability for Costs: Summary and Conduct

21. Accordingly, for the three separate reasons identified above, I am bound to conclude that the defendant was the successful party and that the claimant should pay the defendant's costs in accordance with CPR 44.3.

22. There is a further reason for my conclusion that, in all the circumstances, the claimant should pay the defendant's costs, although I make plain that it is of less importance than the three matters previously identified. As both parties have submitted, their respective conduct is a matter which I can and, if appropriate, should take into account when deciding liability for costs pursuant to CPR 44.3(4)(a). Both parties make various suggestions in relation to conduct as against the other. It seems to me that the relevant conduct from this point of view is the conduct identified in my judgment of 19.12.05. There, the vast majority of the criticisms which I made in relation to conduct are criticisms of the claimant, including, in particular, those at paragraphs 24-34. Accordingly, it seems to me that those are matters which, to the extent that it is appropriate for me to take them into account in deciding the question of costs, further confirm my conclusion that the claimant should pay the defendant's costs.

23. Thus, I consider that the conduct of the claimant is open to criticism for the reasons identified in the relevant paragraphs of my judgment. I do, therefore, take into account this conduct as supporting my conclusion that the claimant should pay the defendant's costs. I stress, however, that that is a point which is of less significance than the three other reasons which I have set out above.

The Particular Points Raised by the Claimant

24. Ms Jackson raises a number of particular points in her submissions; some of these relate to specific periods during which the costs were incurred and some relate to particular disputes in the litigation. In deference to her it is, therefore, appropriate for me to comment briefly on each of those points. I do so below.

Costs up to 19th November 2004

25. The claimant seeks its costs up to this date, which was the last date on which the first payment into court could be accepted. However, as Ms Jackson conceded, this argument only gets off the ground if I had concluded that the offer of April 2004 was invalid, so that this first payment into court would then become the first valid offer to which I could have regard. For the reasons set out above I have concluded that the offer of April 2004 was valid. Accordingly, as Ms Jackson accepted, this argument falls away.

Costs from 19th November 2004 to 28th November 2005

26. This period ends with the finalisation of the defendant's pleadings and, importantly, the inclusion within those pleadings of the counterclaim for the £27,752.32 arising out of the failure on the part of the claimant and/or Mr. Storey to make plain that the works themselves were being carried out for just £200,000. Ms Jackson said that, although the claimant had not beaten the payments into court, this was because of that late amendment and that therefore, in accordance with CPR 36.20, it would be unjust for the claimant to pay the defendant's costs incurred during this period, before the amendment was made. However, it was again accepted that this was an argument which could not work if the offer of April 2004 was valid, because that, of course, was an offer made before both the payments into court, and would not have been bettered, even without the cross-claim for the £27,752.32. Again, since I found that that pre-action offer was valid, I again reject the submission that the claimant should somehow not be liable for the costs incurred by the defendant between 19th November 2004 and 28th November 2005.

27. In any event, it seems to me that it would, in any event, be wrong to penalise the defendant in costs because of the late amendment, bearing in mind that the true breakdown of the contract sum was

information which was always known to the claimant, whilst the defendant had no way of knowing about it until the provision of the claimant's written statements, a few months before trial.

Costs of the Amendments

28. This is a convenient place to deal with the costs of the amendments to the defendant's case, which included the amendments which brought in the cross-claim for the return of the £27,752.32, as a result of the true make-up of the contract sum. The cross-claim was put by way of fraudulent misrepresentation or, alternatively, by reference to a breach of contract. The facts were the same, but the legal labels were different. Plainly the costs of and occasioned by the amendments to the pleadings should be paid by the defendant to the claimant; that is the normal order, and the one I make here. However, Ms Jackson goes on to say that the defendant should pay all the costs of this new cross-claim because, in the event, the allegation of fraudulent misrepresentation failed. She also argued that, since Mr Weatherill QC was only instructed because of the allegation of fraud, it was appropriate that the defendant should pay the costs of his involvement in any event.

29. I do not accept those submissions. The reason is simple. The allegation of fraudulent misrepresentation failed, but the cross-claim still succeeded, on the alternative basis, as a claim for damages for breach of contract. It succeeded because, on the evidence, I concluded that the claimant was not entitled to the £27,752.32. Accordingly, whatever the legal label, there was a dispute, the result of which meant that, on that issue, the defendant was wholly successful. It seems to me, therefore, that it could not possibly be right to make the defendant pay the costs of a part of the case on which he was successful. I do not regard the legal label put on the cross-claim as being in any way relevant to the question of who should pay the costs of the issue.

Costs from 28th November 2005 onwards

30. Ms Jackson had no submissions to make as to why the claimant should not pay the defendant's costs from 28th November 2005 onwards. She again very fairly conceded that, at least from that date on, all relevant points were pleaded and known so that, had it so desired, the claimant could have come to terms with the defendant. In my judgment, the claimant should plainly have realised by then, if not before, that it was not going to beat the payment into court, let alone the offer made before the action started. The action should, therefore, have been compromised at that point.

Individual Aspects of the Claim

31. As I have indicated, Miss Jackson also had particular points to make about individual aspects of the claim. I deal with each of those points briefly.

(i) The Original Contract

Ms Jackson said that it was unclear whether or not the defendant admitted the sums claimed under the original agreement and that this was not made plain until the trial. I do not accept that. It was always clear to me that the defendant accepted the amount claimed under the original contract, less the cross-claim for defects and less the cross-claim for £27,752.32, added by way of the late amendment with which I have dealt above.

(ii) The Supplemental Agreement/Quantum Meruit

Ms Jackson accepted that the claimant had failed entirely on this part of the case. However, she submitted that the costs on this part of the case had been increased by repeated allegations of fraud made by the defendant. These allegations, she said, were not included in the pleadings, but were made by way of correspondence. I do not accept that. I have looked at the correspondence relied on, and it seems to me that what was being asked for was details of invoices and whether or not those invoices had been paid. It is a regrettable feature of this sort of litigation that, sometimes, the parties cannot agree even on whether invoiced sums have actually been paid. It does not seem to me that those requests amounted to an assertion of fraud.

(iii) The Compromise Agreement

Whilst I accept, of course, that the defendant lost on whether or not there had been a compromise agreement, it does not seem to me that that can make any difference to my decision on costs, particularly given that the claimant would have been so much better off if it had accepted the offer made by the defendant in April 2004.

(iv) Counterclaim

I have already really dealt with this above. Whilst the defendant did not recover the amount pleaded, there was never any offer by the claimant in respect of the counterclaim so the defendant was entitled to pursue it. It should also be noted that the claimant was successful on the majority of the items in the counterclaim, albeit not always in the sums claimed.

(iv) Loss of Profit

I accept that the defendant was unsuccessful in relation to the loss of profit claim. However, this was one aspect of one item of the counterclaim, and it does not seem to me that it would be realistic or just for me to deprive the defendant of this one particular area of its costs. I, therefore, decline to do so.

32. Accordingly, despite Ms Jackson's best endeavours, there was nothing in her submissions, either as to the relevant time periods or the various aspects of the case, that caused me to modify the conclusion set out above to the effect that, in the interests of justice, it is entirely appropriate for the unsuccessful party, namely the claimant, to pay the costs of the successful party, namely the defendant.

Basis of Assessment of the Defendant's Costs

33. The defendant seeks an order that the claimant should pay its costs from 27th October 2004 (the date of the first payment in) on an indemnity basis. Mr. Letman contends that the failure to accept the April 2004 offer, and then the failure to accept the first payment into court, was wholly unreasonable. As he put it in his written submissions: "This is not a matter of hindsight. The claimant should have realised that the claims were wholly unmeritorious and ill-founded".

34. The relevant principles as to indemnity costs are set out by May L.J. in **Reid Minty v. Taylor**. At paragraph 28 he said: *"If costs are awarded on an indemnity basis, in many cases there will be some implicit expression of disapproval of the way in which the litigation has been conducted, but I do not think that this will necessarily be so in every case. What is, however, relevant at the present appeal is that litigation can readily be conducted in a way which is unreasonable and which justifies an order for costs on an indemnity basis where the conduct could not properly be regarded as lacking moral probity or deserving moral condemnation".*

At paragraph 32 of his judgment, he went on to say*: "There will be many cases in which although the defendant asserts a strong case throughout and eventually wins, the court will not regard the claimant's conduct of the litigation as unreasonable and will not be persuaded to award the defendant indemnity costs. There may be others where the conduct of a losing claimant will be regarded in all the circumstances as meriting an order in favour of the defendant of indemnity costs. Offers to settle and their terms will be relevant and if they come within Part 36 may, subject to the court's discretion, be determinative".*

35. I also refer to the judgment of Simon Brown L.J. in **Kiam v. MGN Limited (2)** [2002] 1 WLR 2810 where he said: *"I for my part understand the court there [in **Reid Minty**] to have been deciding no more than that conduct, albeit falling short of misconduct deserving a moral condemnation, <u>can</u> be so unreasonable as to justify an order for indemnity costs. With that I respectfully agree. To my mind, however, such conduct would need to be unreasonable to a high degree. Unreasonable in the context certainly does not mean merely wrong or misguided in hindsight. An indemnity costs order made under Part 44, unlike one made under Part 36, does I think carry at least some stigma. It is of its nature penal rather than exhortatory".*

36. It seems to me that, down to 28th November 2005, it would be wrong for me to exercise my discretion in favour of an order that the defendant's costs should be assessed on an indemnity basis. Prior to that date, no part of the defendant's pleaded case sought to claim back the £27,752.32. It was, after all, the success of that cross-claim which explains why the claimant failed to beat either of the two payments into court. Whilst, as I make clear in paragraph 27 above, the lateness of the amendment should not affect the defendant's entitlement, as the successful party, to recover his costs, it is a factor which militates against ordering such costs to be paid on an indemnity basis. And even if, before the 28th of November 2005, the claimant should have known that the claims for additional work would probably fail, thereby making it likely that the claimant would not beat the offer of April 2004, such a conclusion would have been the result of a cumulative process occurring during the latter part of 2005, as a result of the views of the experts and the failure by the claimant to obtain the evidence needed to plug the gaps in its case properly identified by those experts.

37. In short, I consider that, down to 28th November 2005, the claimant's conduct was not such as to warrant an order for indemnity costs. It might be thought that it was not far off it, but I conclude that, in respect of those costs, the test set out in **Reid Minty** and **Kiam v. MGN** has not (quite) been made out. I do not regard the claimant's conduct up to that date to be unreasonable to a high degree such as to warrant the order sought.

38. However, from 28th November 2005 onwards, namely for the preparation period prior to the trial and the entirety of the trial itself, it seems to me that it would be appropriate to order the claimant to pay the defendant's costs on an indemnity basis. The reason for that is really identified in paragraph 30 above. At that date it was, or should have been, clear to the claimant that, not only was it very unlikely to beat the April 2004 offer, but it was not even going to beat the payments into court. This was because, of course, the £27,752.32 cross-claim in respect of the contract sum was now finally in play. Thus the claimant's conduct in maintaining what was by then a hopeless case beyond 28th November 2005 was unreasonable and did amount to conduct unreasonable to a high degree in accordance with **Reid Minty** and **Kiam v. MGN**. I, therefore, consider that the defendant is entitled to have its costs from 28th November 2005 onwards assessed on an indemnity basis.

39. I should say, with some diffidence, that, in the case of **Waites Construction Limited v. HGP Greentree Alchurch Evans Limited** [2005] EWHC 2174 TCC, I concluded, in accordance with the authorities set out above, that the conduct of a party who pursues a claim which it knows or must know is doomed to fail is so unreasonable as to justify an order for indemnity costs. It seems to me that the same principle applies here, although, in the present case, the relevant failure was the claimant's failure to beat the payments into court or the offer of April 2004.

40. I consider therefore, taking all these points into account that, from 28th November 2005 onwards, but not before, the defendant's costs should be assessed and paid by the claimant on an indemnity basis.

MS C. JACKSON (instructed by Zermansky & Co.) appeared on behalf of the Claimant.
MR. P. LETMAN (instructed by Saunders) appeared on behalf of the Defendant.