

ENGLAND AND WALES / JUDGMENT

William Francis Seymour v Ragley Trust Company Limited & Anor

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IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY, TRUSTS AND PROBATE LIST Ref. PT-2023-000830 7 Rolls Buildings Fetter Lane London Before MASTER BRIGHTWELL IN THE MATTER OF NCN: [2025] EWHC 3400 (Ch) WILLIAM FRANCIS SEYMOUR (Claimant) v

- (1) RAGLEY TRUST COMPANY LIMITED
- (2) SEYMOUR TRUST COMPANY LIMITED & OTHERS (Defendants) Paul Burton (instructed by Shakespeare Martineau LLP) for the Claimant Timothy Sherwin (instructed by Charles Russell Speechlys LLP) for the First and Second Defendants Richard Dew (instructed by Wright Hassall LLP) for the Third to Seventh Defendants

JUDGMENT

4 NOVEMBER 2025 (APPROVED)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved. Transcribed from the official recording by eScribers Ltd Ludgate House, 107-111 Fleet Street, London EC4A 2AB Tel: 0330 100 5223 | Email: uk.transcripts@escribers.net | uk.escribers.net MASTER BRIGHTWELL: 1. On 19 May 2025, I handed down judgment in this claim in which the claimant sought the removal of the first two defendants as trustees of various trusts connected with the Marquess of Hertford. I dismissed the claim for the reasons that I gave in my judgment (see

[2025] EWHC 1099 (Ch), which I do not seek to repeat now. It falls to me now to determine the incidence of the costs of the claim in principle. The reasons that I give for my decisions on costs must be read together with the main decision, including the background to the claim. 2. The two sets of defendants, being the trustees and the remaining defendants being family defendants, each submit that as they were the successful parties to the claim, there should be an order made inter partes that the claimant pays their costs of the claim on the standard basis. 3. It is, of course, the general rule that the unsuccessful party will be ordered to pay the costs of the successful party at the end of proceedings. That is provided for in CPR r 44.2(2) (a). The claimant accepts that the defendants were the

successful parties, but contends that I should make a different order as CPR r 44.2(2)(b) permits me to do. The claimant's contention is that either the costs of all of the parties should be paid out of the trust assets, alternatively that an order should be made for a payment of only a proportion of the defendants' costs. Mr Burton, appearing again for the claimant, submits that the relevant proportion should be no more than 50 per cent of the costs of the defendants. 4. I stress that, at this stage, I am considering only the incidence of costs in principle and not the quantum of costs. The costs of the two sets of defendants together are in the order of around £1,000,000, and one can understand why some of the issues raised by Mr Burton on behalf of the claimant concern the level of costs. 5. The relevant principles applicable to the costs of claims against trustees have been most recently authoritatively explained by the Court of Appeal in *Price v Saundry* [2019] EWCA Civ 2261. Much of the judgment was taken up with a consideration of the basis upon which trustees and personal representatives have an indemnity out of the assets which they hold in that capacity and the circumstances in which that indemnity may be lost. Before one gets to the stage of considering the trustees' indemnity, one has to classify or characterise the nature of the proceedings, and Asplin LJ set out the approach to be followed by the court, by reference to earlier and well-established authority. Transcribed from the official recording by eScribers 6. First of all, after referring to the leading decision of *Re Buckton* [1907] 2 Ch 406, Asplin LJ, at [26], cited what Hoffman LJ (as he then was) said about Buckton in *McDonald v Hall* [1995] ICR 685. He said this, at 695G – 696B. “While warning that it was ‘well nigh impossible to lay down any general rules which can be depended on to meet the ever varying circumstances of particular cases’, he said that trust litigation could be divided into three categories. First, proceedings brought by trustees to have the guidance of the court as to the construction of the trust instrument or some question arising in the course of administration. In such cases, the costs of all parties are usually treated as necessarily incurred for the benefit of the estate and ordered to be paid out of the fund. Secondly, there are cases in which the application is made by someone other than the trustees, but raises the same kind of point as in the first class and would have justified an application by the trustees. This second class is treated in the same way as the first. Thirdly, there are cases in which a beneficiary is making a hostile claim against the trustees or another beneficiary. This is treated in the same way as ordinary common law litigation and costs usually follow the event.” The question, therefore, becomes that of identifying whether the case is one falling within the third category. That is where a beneficiary is making a hostile claim against the trustees or another beneficiary.

7. Asplin LJ went on in *Price v Saundry* at [27] to refer to the decision of Lightman J in *Alsop Wilkinson v Neary* [1996] 1 WLR 1220. I refer in particular to that part of the extract where Lightman J defined a “beneficiaries dispute”. This is a dispute with one or more of the beneficiaries as to the propriety of any action which the trustees have taken or omitted to take or may or may not take in the future. This may take the form of proceedings by a beneficiary alleging breach of trust by the trustees and seeking removal of the trustees and/or damages for breach of trust. 8. Then: “A beneficiaries dispute is regarded as ordinary

hostile litigation in which costs follow the event and do not come out of the trust estate: see per Hoffmann L. J. in *McDonald v. Horn* [1995] I. C. R. 685, 696.” 9. Asplin LJ then, at [28], discussed the effect of a trustee successfully defending a hostile claim with reference to the decision of the Court of Appeal in *Armitage v Nurse* [1998] Ch

241. The general rule is, and I paraphrase, that a trustee who has successfully defended him or herself against a claim for breach of trust is entitled to an indemnity out of the trust assets for having doing so. That is, of course, a distinct consideration from that of whether the court should make any order for costs as between the parties. Transcribed from the official recording by eScribers
10. After discussion with counsel today, I do not believe that Mr Burton seriously opposes the notion that this is a beneficiaries’ dispute. For the avoidance of any doubt, I record my conclusion that it is such a dispute. It is a claim in which a large number of allegations, including many specific allegations of misconduct, were brought against the trustee defendants and against which the trustee defendants successfully defended themselves.
11. Mr Burton made a number of submissions as to why, in all the circumstances of the case (and he specifically referred to CPR r 44.2(4) which cites those words), I should make an order other than the normal order that the unsuccessful party should pay the successful party’s costs.
12. As Mr Burton submitted, the court takes account of all the circumstances, including, in particular, those which are enumerated in rule 44.2(4). One of those is the conduct of the parties, which includes conduct before, as well as during, the proceedings, as well as whether a party has succeeded on part of its case, even if that party has not been wholly successful. The court also, of course, takes account of any admissible offers to settle. 13. It is well established that, where a party has been successful and is the successful party, but has not won on every single issue, the general rule is not automatically displaced. The court will take account of the fact that a party has not succeeded on some issues in an appropriate case, either by making an issues-based costs order or making a proportionate reduction where it is clear that an identifiable part of the costs were incurred by the overall unsuccessful party on issues where they can be seen to have been successful. In an appropriate case, that reduction will be ascertained very much on a broad brush basis. This is, however, not a case where the claimant seeks a reduction on the basis that he has been successful on certain issues, with perhaps the exception of one point to which I will come.
14. The court may also depart from the general rule where a party’s conduct justifies it. It seems to me that if the court is to deprive a successful party of part of their costs because of conduct, it must also be able to identify, at least in broad brush or in general terms, a part or proportion of the costs of the unsuccessful party which were incurred as a result of the unreasonable conduct which is complained about.

15. Turning to the specific points which Mr Burton took on behalf of the claimant, the first might have been made in support of an argument that, to some extent, the claimant had succeeded on the claim. It was suggested that the claimant had succeeded in effecting a change of the directors of the trust companies or, at any rate, in obtaining an indication that the directors intended to take steps to put in place a scheme for their replacement in relatively short order. I consider that the direct response to Mr Burton's submission is found in a letter Transcribed from the official recording by eScribers to which Mr Dew referred me, sent by the claimant's solicitors after this suggestion had been made. In that letter, a letter from Shakespeare Martineau to Charles Russell Speechlys ("CRS") of 11 December 2024, it was said: "The suggestion of the appointment of a fourth director is not going to achieve anything of value and, in any event, the trustees should not be taking any significant steps in the administration of the trusts, save those necessary to prevent loss. Your latest letter is an attempt to provide a veneer of respectability to the trustees' conduct and their previous failures to engage with our client in any meaningful way. It is too little, too late." The letter then goes on to suggest that the appointment of an additional director from a pool of candidates was a forlorn and belated attempt to achieve some sort of costs protection or, worse, an attempt simply to provoke the claimant.
16. It is quite clear that the claimant himself has not viewed this proposal as a partial success and, furthermore, I indicated in the judgment that it was not the basis for the decision I made, and I stated in terms that I would have come to the same conclusion even if it had not been made. I do not consider this to be any reason to depart from the general rule as to costs.
17. Mr Burton made the point in his written submissions, which he has not greatly expanded on orally even though it was referred to today, that the claimant considered that (and I quote here from the skeleton argument): "He found himself in a position where he had only two choices: either seek the removal of the trustees or simply walk away from the trusts and any possibility of future benefit for himself, his wife or his children. This is in reality no choice at all, and for his wife and children, if not for himself, he was forced to take a stand. He did not create this situation. Despite some criticisms by the Court, the Court has not found that he did."
18. This might have been prayed in aid of an argument that this was not, in fact, a beneficiaries' dispute. As I have already explained, I consider in light of the nature of the allegations of misconduct, which were pursued for the benefit of some but not all beneficiaries, that it was such a dispute. It also does not seem to me to be any reason why the claimant might be seen to have been partially successful in the claim or, as far as costs inter partes are concerned, to depart from the general rule.
19. Mr Burton also renewed a point which he took on the first day of the disposal hearing in February. This was to criticise the trustee defendants for indicating on the one hand that they were not clinging to office and that they were prepared to retire or be removed, if the court so directed but that, on the other hand, they defended themselves against the allegations which were made against them. Transcribed from the official recording by

eScribers 21. In their Acknowledgment of Service, the trustee defendants indicated that they disputed the claim and in Mr Hay's witness statements the position of the trustee defendants was clearly set out. The statement that they did not cling to office was indeed made, but the positive response that they made to the allegations of misconduct was also set out in very considerable detail. That was developed in Mr Hay's second statement which was, of course, made in response to the second witness statement of the claimant.

22. There was a second directions hearing before the disposal hearing where the position adopted by each set of parties was, in my view, clear. As I indicated in paragraph 3 of my substantive judgment, it does not seem to me that the claimant or, perhaps more pertinently, the claimant's representatives were in any way taken by surprise at the disposal hearing by the trustee defendants' position.
23. The claim was made with the very long list of allegations of wrongdoing on the part of the trustee defendants and, whilst it is true that the claimant did not rely merely on the breakdown in trust and confidence which he asserted, that breakdown in trust and confidence was by no means the only basis on which removal was sought. 24. I consider the claim to have been a root and branch attack on almost every aspect of the trustees' conduct over recent years. The proceedings have been, in every sense of the word, hostile. Whilst it is true to say that one or two minor points of criticism were made in the judgment, for instance, the failure of the then trustees to be more proactive in finalising the draft lease in relation to the Ragley Woodlands when the rental payment remained undetermined, the allegations were essentially dismissed.
25. Where allegations of misconduct are dismissed in a beneficiaries' dispute, as the authorities I have cited make clear, the general rule is the starting point. I do not consider it helpful in that context to consider the extent to which the trustees were truly neutral. If the claim had gone the other way and an order for removal had been made, or if a number of the allegations of misconduct had been substantiated, the argument would undoubtedly have arisen as to whether the trustees had lost their indemnity from the trust assets and/or should be required to pay the claimant's costs. I do not think I need to go further than to say that there would have been strong arguments in favour of such orders being made.
26. Again, it seems to me at least on one view, the real complaint is as to quantum. I discerned one of Mr Burton's submissions to be this: he submitted that this was a Part 8 claim, without cross-examination, and without pleadings, rather than a Part 7 claim making allegations of breach of trust and seeking not only to remove the trustees but also equitable compensation (as in the cases cited in the substantive judgment). His position, therefore, Transcribed from the official recording by eScribers seemed to be that it would have been appropriate for the trustee defendants to make a less full response to the allegations. 27. I consider, however, that a trustee faced with such allegations must be entitled to respond to them by evidence as fully as is reasonable in order to rebut the suggestion of misconduct. It was open to any party to seek a direction for cross-examination, which cross-examination can be ordered in a Part 8 claim where appropriate. At the second directions hearing, I specifically raised with

the parties whether any of them sought such a direction, and none of them did. 28. If there are legitimate complaints about the amount of costs incurred by the trustee defendants in responding to the allegations, they are a matter for assessment and not a matter which I can deal with by making what would have to be a peremptory reduction to the costs awarded as a matter of principle.

29. Mr Burton then went on to refer to the correspondence which took place between the parties in the months leading up to the disposal hearing. One specific complaint was that the trustee directors did not personally attend a mediation which took place on 24 January 2025, a couple of weeks before the disposal hearing.
30. Mr Sherwin took me through that correspondence in some detail. It is obvious to me that in the months leading up to the final hearing, the trustee defendants' solicitors, on instructions, were well engaged in the ADR process. There was a meeting which took place in London, partly on an open basis and partly on a without prejudice basis, at which it was recognised that the claimant's issue was not merely about the identity of the trustees, but that this was a dispute which might be capable of resolution in other ways as well.
31. CRS asked the claimant's solicitors to identify what his proposals were so that instructions could be taken on them and, just as importantly, to ensure that all of the beneficiaries could be consulted. It is clear that a resolution of this dispute on the basis of a clean break, as it has been described, would require the consent of all of the adult beneficiaries and would be primarily a matter for the beneficiaries rather than for the trustees. The role of the trustees would be to facilitate such a partition. 32. It is also obvious to me that, with a series of interlocking trusts such as this, the fiscal consequences of any such partition would be very complex indeed and require considerable consideration and specialist advice. I agree with Mr Sherwin's submission that by the time of the proposed mediation, or shortly before it, it was far too late for that sort of proposal to be properly considered in advance of the disposal hearing. There was also no objection taken at Transcribed from the official recording by eScribers the time to the fact that the trustee directors personally would not attend the mediation, but only their solicitors. 33. I was also struck by the tenor of the correspondence in that period. I fully recognise that when negotiating, particularly when partly on an open basis and partly on a without prejudice basis, parties have an eye to what the court will see if the claim does not settle and it is perfectly proper that they should do so, but the focus of the claimant's correspondence was not in promoting a settlement, but in further making points as to why the trustees needed to be removed.
34. CRS asked on more than one occasion for details of the plans for the education of the claimant's sons, which were not provided, and I note that the last word on this was, as I stated in my judgment, a statement by the claimant's solicitors that the request was "faux naïve". This seems to me even more of a contrived statement now, in light of sight of all of the correspondence, than it seemed to me at the time when I was preparing my judgment. Again, I do not consider these things as being any reason to depart from the general rule.

35. Two further points were taken, one of which was mentioned in the claimant's written submissions, one of which was not. The first was a suggestion that Lord Hertford had bankrolled the trustee defendants or paid their legal costs. Having heard from Mr Sherwin and from Mr Dew, I am satisfied that this was not the case. The trustees have, I am told, recouped some of their costs since the judgment in their favour, in reliance on their indemnity. Mr Burton did not, in reply, suggest that had been improper. I do not consider there is anything further on that point that is relevant to the decision on costs.
36. The other point which had not been mentioned in written submissions related to a development plan by the local authority, relating in particular to around 153 acres of land contained within the ST2 and ST4 settlements which is part of the Ragley estate, if I can describe it in those terms. A plan was produced dated January 2025 which describes that land as a relevant plot and there is a suggestion that the trustees have followed up in an unparticularised way by indicating a willingness to engage with the proposal, which would no doubt entail the sale of that land to facilitate a development.
37. Mr Sherwin indicated, on instructions, that the trustees had no role in the preparation of the plan and that they became aware of it in January 2025. I am in no position to make any finding of precisely what the trustees knew in the short period between then and the disposal hearing. All I will say is that, in light of the way in which this litigation has been conducted, I have little doubt that if the trustees had sought to introduce new evidence it is very likely that there would have been an opposition to their doing so. The suggestion that it would have Transcribed from the official recording by eScribers at that stage changed the approach of the claimants to the litigation seems to me to be wholly unrealistic.
38. But there is a more fundamental point, which is that this point was not made with proper notice to the defendants. It would in those circumstances be quite wrong for me to make any findings adverse to the defendants in relation to it on costs. For both of those reasons this also affords no reason to depart from the general rule as to costs.
39. As far as the costs of the family defendants are concerned, again, there is a concern about the quantum of those costs, which I understand. For present purposes, I am considering the order as to costs in principle. It was not suggested to me, at least orally today, that the beneficiaries were not proper defendants and, indeed, as Mr Dew explained, they were joined as defendants by consent at an early stage in the proceedings. 40. I consider that on the question of principle both the trustee defendants and the family defendants each reasonably incurred a set of costs. As I have already indicated, any question of overlap between the different sets of defendants or overlap within a particular side of costs, noting that the family defendants changed solicitors in the period before the disposal hearing, are matters for detailed assessment. 41. I do not consider that the claimant has identified any discrete issues or documents, or any area of participation of the family defendants generally, where it could be said they have taken an impermissible or unreasonable approach, or an approach which caused the claimant himself to incur further costs which would not have been incurred but for that approach.

42. The evidence that was given on behalf of the family defendants did not merely regurgitate what Mr Hay has said. It dealt with the family background. It was no doubt a matter of pain for all sides in this case that this family background became the subject of public discussion. But the claimant had himself raised it in a way in which the family defendants were, in my view, entitled to respond so that the full picture was before the court. That was so particularly in this case where the allegation was that the trustees were effectively either beholden to, or acting on the instructions of, Lord and Lady Hertford rather than in the interests of the beneficiaries as a whole.
43. And so, for all of those reasons, I will not depart from the general rule and I consider the appropriate order is that the claimant should pay the defendants' costs on the standard basis, to be assessed if not agreed.
44. There was no objection taken to Mr Sherwin's submission that to the extent the costs are not recovered from the claimant for any reason, either because they are assessed down or because they are not recovered, the trustee defendants should have an indemnity from the Transcribed from the official recording by eScribers trust assets. It seems to me that that indemnity should be given effect by the trustees having their costs to be assessed out of the fund on the indemnity basis. (There followed proceedings – see separate transcript)
45. As the White Book summarised the position at 44.2.12, in what is often seen as this leading case, *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm), Christopher Clarke LJ said that: "what is 'a reasonable sum on account of costs' will have to be an estimate dependent on the circumstances, the chief of which is that there will, by definition, have been no detailed assessment and thus an element of uncertainty, the extent of which may differ widely from case to case as to what will be allowed on detailed assessment. The judge explained ([23] and [24]) that a reasonable sum would often be one that was an estimate of the likely level of recovery subject, to an appropriate margin to allow for error in the estimation. This can be done by taking the lowest figure in a likely range or making a deduction from a single estimated figure or perhaps from the lowest figure in the range if the range itself is not very broad. In determining whether to order any payment and its amount, account needs to be taken of all relevant factors including the likelihood (if it can be assessed) of the claimants being awarded the costs that they seek or a lesser and if so what proportion of them; the difficulty, if any, that may be faced in recovering those costs; the likelihood of a successful appeal; the means of the parties; the imminence of any assessment; any relevant delay and whether the paying party will have any difficulty in recovery in the case of any overpayment." 46. It is true, as Mr Burton submits, that the court is not bound to order a payment on account of costs, but it is required to make such an order unless there is a good reason not to do so. The only reason which Mr Burton put forward was that there were a lot of issues for detailed assessment, some of which had been trailed or ventilated in the submissions this morning, and it seems to me clear from the authorities that the court takes account of that not by declining to order a payment on account, but by setting an appropriate level for that payment. 47. I have already indicated my concern at the

level of the defendants' costs, which exceed £1,000,000, for an admittedly factually complex, three-day disposal hearing, where there was no cross-examination.

48. There are factors pointing both ways, which I have to take into account. The first is the one that I have just mentioned, that, even if reasonably incurred, costs will be disallowed on the standard basis if they are unreasonable in amount or if they are disproportionate and, on assessment, any doubts will fall to be resolved in favour of the paying party. Transcribed from the official recording by eScribers
49. One does not consider what is proportionate merely by looking at the value of the relevant trusts, although that is a material factor. One looks at the issues that are raised. The trustee defendants have incurred something like £50,000 in costs since June 2025, which would include preparation of the written submissions and attendance today. This does seem to me to be, at least arguably, disproportionate. Those are no doubts points which will be taken further on detailed assessment, if it goes that far. This may suggest that the costs incurred by the trustee defendants in defending the claim more generally may have been to an extent disproportionate.
50. With reference to the trustee defendants' costs, a point the other way is the one which Mr Sherwin makes, which I also consider has some significant force. This is that, given the wide and diffuse nature of the misconduct allegations that were pursued by the claimant, it was reasonably necessary for the trustee defendants to respond in the way that they did. Mr Sherwin commented on the way in which the allegations were made in writing and then pursued at the disposal hearing. It seems to me relevant to note in this context that the way in which the claimant's allegations were set out made it very difficult to condense them into a form in which they could be analysed and then responded to. I say that from my own experience of preparing a judgment after the disposal hearing, a process which was greatly lengthened by the absence of any coherent written narrative setting out the detail of the claimant's allegations by reference to the grounds of removal.
51. There was a discussion with the parties at both of the directions hearings about the way in which the allegations might be summarised into overarching grounds, in order to enable both the defendants to respond to them and the court to deal with them. For reasons I gave in my main judgment, I do not consider that such a summary was ever produced. I consider that this will inevitably have significantly increased the work which had to be carried out, particularly by the trustee defendants' legal representatives. 52. I have to balance both of the factors I have mentioned, when setting a figure. It seems to me, looking at the first and second defendants, that the figure of 50 per cent of the costs claimed is broadly correct but, in light of the amount of costs due, I am going to reduce that slightly and to order a payment on account of £350,000. Given the extent of the allegations made, it seems to me that that is at the lower end of the likely range of figures which would be awarded upon a detailed assessment. 53. I also consider in relation to all defendants that, in the event that there was any overpayment, there would not be difficulties in reclaiming repayment. Transcribed from the official recording by eScribers

54. As far as the family defendants are concerned, the sum sought is £200,000, which is just under 70 per cent of the total sum of £330,000. I do not quite agree with Mr Dew that the other defendants were required fully to engage with all of the grounds of appeal. They obviously had to read them and understand them but, as we have already discussed today, most of them were allegations of misconduct against the trustee defendants.
55. There are also points about potential overlap of work, both concerning work which had already been done necessarily by the trustee defendants, and from the fact that the family defendants changed solicitors, which also fall to be taken into account. Mr Dew's more limited role at the final hearing was consistent with the bulk of the work on the defendants' side having been carried out by the trustee defendants.
56. With those factors in mind, there should be a similar reduction to that which I am making to the other defendants' costs. I will order a payment on account of £150,000 for the family defendants.
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