



Neutral Citation Number: [2025] EWHC 568 (Ch)

Case No: PT-2024-000146

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17/3/2025

Before:

MASTER CLARK

Between:

KANOKPORN NATTHACHAI

Claimant

- and -

(1) SIMON BURRAGE

(2) DAVID BURRAGE

(in their capacities as executors and beneficiaries)

Defendants

Paul Harris SC (instructed by Alstern Solicitors Ltd) for the Claimant
Lydia Pemberton (instructed by Grant Saw Solicitors LLP) for the Defendants

Hearing date: 28 January 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 17 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Master Clark:

Application

1. This is my judgment on the defendants' application for security for costs made by application notice dated 27 August 2024.

Parties and the claim

2. The claim concerns the estate of Roger Burrage, who died by suicide on 9 January 2023. The claimant, Kanokporn Nattachai, claims to have been in a relationship with the deceased for over 7 years.
3. The defendants, Simon and David Burrage, are the sons of the deceased. They are the executors and only beneficiaries under his will dated 30 July 2006.
4. The assets in the English estate, as set out in the defendants' evidence, comprise:
 - (1) a flat: Flat 33, Rythe College, Portsmouth Road, Thames Ditton, Surrey, KT7 OTE;
 - (2) about £23,000 in bank accounts;
 - (3) a car worth about £13,000.The value of the net estate stated on the defendants' application for a grant of probate is £420,924.
5. The deceased also had assets (including land) in Thailand and, the claimant alleges, in Singapore. He made a Thai will in 2016. However, the ownership of the Thai assets is disputed as between the defendants and the claimant, and their value is uncertain.
6. The claim was issued on 19 February 2024. In it the claimant seeks:
 - (1) provision under the Inheritance (Provision for Family and Dependents) Act 1975 as a person maintained by the deceased;
 - (2) repayment of a loan of £193,861.24;
 - (3) a proprietary interest in the estate arising under the doctrine of proprietary estoppel;
 - (4) an order passing over the defendants and entitling her to a grant of letters of administration of the deceased's estate.
7. The claim under the 1975 Act and/or under the doctrine of proprietary estoppel is quantified as for one third of the deceased's estate.

Security for costs - legal principles

8. The application is made under CPR 25.13(2)(a), which relevantly provides:

“25.13— Conditions to be satisfied

- (1) The court may make an order for security for costs under rule 25.12 if–

- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
- (b)
 - (i) one or more of the conditions in paragraph (2) applies,
 - ...
- (2) The conditions are—
 - (a) the claimant is—
 - (i) resident out of the jurisdiction; but
 - (ii) not resident in a State bound by the 2005 Hague Convention, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982”

9. As to stifling, the legal principles were common ground. They are summarised at 25.23.1.1 of the 2024 White Book:

“Stifling

If the effect of an order for security would be to prevent the respondent to application from continuing its claim, then security should not be ordered—see *Goldtrail Travel Ltd v Aydin* [2017] UKSC 57; [2017] 1 W.L.R. 3014, per Lord Wilson at [12]. However, the burden lies on the respondent to show, on the balance of probabilities, that the effect of an order would be to stifle the claim—see *Goldtrail* per Lord Wilson at [15] and [23]. To discharge that burden the claimant will need to show that it cannot provide security and cannot obtain appropriate assistance to do so. The court will expect the claimant to be full and frank in relation to these matters.

“The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need”: *MV Yorke Motors v Edwards* [1982] 1 All E.R. 1024, HL, Lord Diplock approving Brandon LJ below.

...

In *Al-Koronky v Time Life Entertainment Group Ltd* [2005] EWHC 1688 (QB) Eady J said this at [31]:

“... it is necessary for the Claimants to demonstrate the probability that their claim would be stifled. It is not something that can be assumed in their favour. It must turn upon the evidence. I approach the matter on the footing that there needs to be full, frank, clear and unequivocal evidence before I should draw any conclusion that a particular order will have the effect of stifling. The test is whether it is more likely than not.”

10. As to the amount of security, the principles are set out in para 25.12.7 of the 2024 White Book:

“Amount of security

The amount of security awarded is in the discretion of the court, which will fix such sums as it thinks just, having regard to all the circumstances of the case (r.25.13(1)(a)). The amount of security awarded is however generally tailored so as to provide protection against the identified risk (see *Chernukhin v Danilina* [2018])

EWCA Civ 1802 at [57], Hamblen LJ cited below in para.25.13.6). In some cases the amount of security may be limited to the extra burden or risk involved in seeking to enforce orders for costs subsequently obtained (see further, para.25.13.6). In other cases the amount of security may relate to the total costs likely to be incurred in opposing the claim or appeal: in *OCM Singapore Njord Holdings Hardrada PTE Ltd v Gulf Petrochem FZC* [2021] EWHC 2447 (Comm) HH Judge Pelling QC sitting as a High Court judge, commenting on the circumstances arising in that case, said:

“It is common ground that in arriving at a figure for security, the court is bound to attempt to arrive at a figure which it is thought likely would be awarded by way of costs following a detailed standard assessment exercise. That, in turn, requires me to have regard to the degree to which costs are reasonable and proportionate in all the circumstances.”

In *Pisante v Logothetis* [2020] EWHC 3332 (Comm); [2020] Costs L.R. 1815 (Henshaw J), the principles were summarised as follows:

- “(i) The appropriate quantum is a matter for the court’s discretion, the overall question being what is just in all the circumstances of the case. In approaching the exercise, the court will not attempt to conduct an exercise similar to a detailed assessment, but will instead approach the evidence as to the amount of costs which will be incurred on a robust basis and applying a broad brush (see also *Excalibur Ventures v Texas Keystone* [2012] EWHC 975 (QB) § 15).
- (ii) In some cases, the court may apply an overall percentage discount to a schedule of costs having regard to (a) the uncertainties of litigation, including the possibility of early settlement and (b) the fact that the costs estimate prepared for the application may well include some detailed items which the claimant could later successfully challenge on a detailed assessment between litigants. There is no hard and fast rule as to the percentage discount to apply. Each case has to be decided upon its own circumstances and it is not always appropriate to make any discount.
- (iii) In deciding the amount of security to award, the court may take into account the ‘balance of prejudice’ as it is sometimes called: a comparison between the harm the applicant would suffer if too little security is given and the harm the claimant would suffer if the amount secured is too high. The balance usually favours the applicant: an under-secured applicant will be unable to recover the balance of the costs which is unsecured whereas, if the applicant is not subsequently awarded costs, or if too much security is given, the claimant may suffer only the cost of having to put up security, or the excess amount of security, as the case may be (see also *Excalibur* § 18) ...
- (v) In determining the amount of security, the court must take into account the amount that the respondent is likely to be able to raise. The court should not normally make continuation of their claim dependent upon a condition which it is impossible for them to fulfil.”

In cases in which a costs management order has been made (as to which, see para.3.12.1) the defendant’s approved or agreed costs budget will be a strong guide as to the likely costs order to be made after trial, if the claim fails; this budget should be used as the relevant reference point (in relation to the incurred costs elements and also the estimated costs elements) for considering the amount which

should be ordered for security for costs (*Sarped Oil International Ltd v Addax Energy SA* [2016] EWCA Civ 120; [2016] B.L.R. 301; [2016] C.P. Rep 24). In other cases the court will calculate the amount to allow as security in a robust, broad brush manner and may also impose a percentage discount having regard to: (i) the uncertainties of litigation, including the possibility of early settlement and (ii) the fact that the costs estimate prepared for the application may well include some detailed items which the claimant could later successfully challenge on a detailed assessment between litigants. There is no hard and fast rule as to the percentage discount to apply. Each case has to be decided upon its own circumstances and it will not always be appropriate to make any discount. A frequently preferred alternative to discounting is for the court to order security for the whole costs, to be paid in specified instalments as the case progresses.

...

In determining the amount of security, the court must take into account the amount which the respondent is likely to be able to raise. An impairment of their right of access to the courts which is disproportionate to the need to protect other parties is likely to be a breach of art.6(1) ECHR. (See further para.3.1.4 above.) On the other hand, where a respondent opposes the making of an order for security or seeks to limit the amount of security by reason of their own impecuniosity, the onus is upon them to put proper and sufficient evidence before the court, and in doing so, they should make full and frank disclosure (*MV Yorke Motors (A Firm) v Edwards* [1982] 1 W.L.R. 444; [1982] 1 All E.R. 1024, HL). If they give an incomplete or misleading account of their resources, the court may, in exercising its discretion, set an amount which represents the court's best estimate of what they can afford (*Al-Koronky v Time-Life Entertainment Group Ltd* [2006] EWCA Civ 1123; and see *Kuenyehia v International Hospitals Group Ltd* [2007] EWCA Civ 274 and *Blue Sky One Ltd v Mahan Air* [2011] EWCA Civ 544, CA, noted in para.52.9.4, below. See also, para.25.13.1.1)."

Claimant's position

11. By the date of the hearing, the principle that security should be granted had been accepted by the claimant. Her solicitors' letter dated 28 January 2025 set out that:
 - (1) £30,000 was the maximum amount the claimant could afford;
 - (2) £20,000 of this would be provided by a mortgage from a Thai bank using her house (see paragraph 15 below) as "collateral";
 - (3) the remaining £10,000 would be obtained through unsecured loans, with £5,000 each from two developers the claimant has worked with a freelance project manager.

Issues in the application

12. In these circumstances, there were 2 issues for determination:
 - (1) whether to grant security greater than £30,000 would stifle the claim;
 - (2) if security greater than £30,000 were to be granted, for what amount.

Claimant's evidence

13. The claimant's evidence as to stifling is set out in 3 places. First, in her 5th witness statement dated 14 October 2024, at para 23, she states that it would be wrong for her claim to be stifled by a requirement for security for costs that she could not meet. No detail or explanation as to how her claim would be stifled is given.
14. At para 29, she states:

“29. I have provided my bank statements [Annexes “KN32” to “KN34”]. Despite limited savings. I managed to cover court and legal fees by selling my jewellery. It is true that I do not have a significant amount of money, but I am determined to pursue justice.”
15. In her 4th witness statement dated 16 September 2024, the claimant addresses the factors listed in section 3 of the 1975 Act. At para 3, she refers to her employment as a freelance project manager without a written contract for around 30,000 THB (about £711) per month in cash. This is not enough, she says, to cover her expenses, said to be about 36,000 THB (about £854) monthly. She sets out her assets as:
 - (1) her house, 249 Village No. 6, Hinlekhfai, Hua Hin, Prachuap Khiri Khan, Thailand 77110 (“the House”) worth 939,750 THB (about £21,000) – she exhibits a land valuation from the Thai Department of Lands;
 - (2) a car worth 100,000 THB (about £2,372);
 - (3) savings of around 200,000 THB (about £4,744).She states that most of her savings have already been spent on court or legal fees.
16. In her 3rd witness statement, dated 19 August 2024, the claimant exhibits bank statements for 2 accounts. These indicate that she has a third bank account with an account number ending in 2257, for which account there are no statements in evidence.
17. In my judgment, this evidence is not “full, frank and unequivocal” as required by the *Al-Koronky* decision for the following reasons.
18. First, the bank statements disclosed by the claimant are inconsistent with the financial information in her 4th witness statement. The bank statements for the account ending in 7018 show the sum equivalent to about £42,000 being paid in by various people in the period August 2023 to July 2024. The claimant has not provided an explanation as to the source of or reason for these payments. Her counsel submitted that it could be inferred that these were payments for jewellery sold by her. I do not accept that submission. There is no evidence as to the source of the payments.
19. Secondly, the claimant's evidence does not explain in any significant detail:

- (1) how she has funded her claim to date – she has not provided any details about the nature and value of the jewellery and when it was sold;
 - (2) now that the jewellery (or most of it) has been sold, how she plans to fund her claim, when her existing costs budget is £83,000 and her solicitors have indicated that they intend to revise it upwards – on 5 March 2025, a revised budget totalling £122,620 was filed;
 - (3) how following the order dated 2 September 2024 of Deputy Master Dovar, she was able to pay
 - (i) the balance of the court fee of £9,431;
 - (ii) the defendants’ costs of £4,500;
 - (iii) the fees of her own solicitors to answer the defendants’ Part 18 requests, prepare her 4th and 5th witness statements, and the cost of translating documents in Thai into English.
20. Thirdly, as noted, the claimant has a bank account for which she has not disclosed the statements.
21. I am not therefore satisfied that the claimant’s financial circumstances are such that to grant security of more than £30,000 would stifle her claim.

Amount of security

22. I heard submissions from both sides as to the amount of security. The starting point in determining the amount of security is the defendants’ costs budget. An unsigned precedent H form was in the bundle with a total of £210,103. The court will also need to make its best estimate as to what the claimant can afford. In doing so, it will need to have regard to the value of the House.
23. The claimant’s evidence as to the value of the House was challenged by the defendants in their reply evidence dated 7 October 2024. They stated that the 939,750 THB was the value of the land on which the House stands, and that the House itself (which is a detached house with a pool) was worth considerably more. They did not obtain any valuation themselves, but relied upon the fact that the claimant had not adduced any evidence to support her valuation.
24. On 19 November 2024, the defendants’ solicitors wrote to the claimant’s solicitors making the same point. The claimant’s solicitors replied stating that that they would seek clarification from the Department of Lands.

25. At the hearing on 28 January 2025, the claimant's counsel conceded that 939,750 THB is only the value of the land. Her position was, without any supporting documentation, that the House is worth £100,000.
26. Following the hearing, on 29 January 2025, the claimant's solicitors filed a letter setting out the following facts:
 - (1) The claimant's enquiries had revealed that the Department of Land typically only provides land value without value of buildings unless a full property valuation is requested. She had promptly sought a full property valuation.
 - (2) A full valuation of the property was completed by 17 December 2024 but the Thai authority only provided the valuation to the claimant after the New Year. Arrangements were then made for it to be translated into English.
 - (3) The translation had been sent to the claimant's solicitors on Friday 10 January 2025, but not immediately dealt with by the solicitor with conduct of the case, Manoon Junchai, because of other work.
 - (4) On Monday 13 January 2025, Mr Junchai's father became seriously ill, his condition deteriorated, and it appeared that he might die. Mr Junchai was extremely pre-occupied with his father's condition and on 17 January 2025 he flew to Bangkok to be him and his family.
 - (5) From 18 to 28 January 2025, Mr Junchai continued working on this case from his father's ICU room. He overlooked that he had not provided the valuation to the court or the defendants; and only realised that he had not done so in the course of attending the hearing on 28 January remotely.
27. The revised valuation dated 17 December 2024 from the Department of Lands shows the total value of the land and the House as 4,055,568 THB (about £93,278).
28. The defendants' position in response (as set out in a note from their counsel filed on 31 January 2025) was that:
 - (1) This information was not formally put in evidence before the Court and the defendants had not had a proper opportunity to consider it or, more importantly, challenge it;
 - (2) The defendants did not accept the valuation (although no reasons were put forward for rejecting it);
 - (3) Insofar as the Court intends to give any weight to it, the defendants said that it should be on the basis that the land is worth a minimum of £100,000;
 - (4) However, the defendants maintained the position that the land is worth more and that the claimant had not adequately demonstrated otherwise.

29. At the end of the hearing I stated that I would grant security greater than £30,000, but reserved my reasons to be delivered orally. On 14 February 2025, I sent directions to the parties setting out that:
- (1) given the relatively low value of the claim, proportionality required one rather than 2 hearings, and for that reason I would deliver judgment in writing.;
 - (2) the question of the amount of security should be determined at the CCMC listed on 27 March 2025, at which the defendants' budgeted costs would be managed.
30. I have a number of concerns about the defendants' budget, particularly about the level of the defendants' costs in this relatively low value claim. As noted above, the debt claim is £193,861, and the other claims (which are realistically in the alternative to the debt claim) are for one third of the net estate i.e. about £140,000. A costs budget of £210,103 (now £214,663 in the revised budget filed on 5 March 2025) is not in my judgement proportionate in relation to the value of the claim.
31. In consequence of the above decision, I also propose to admit the claimant's additional evidence as to the value of the House, and to grant the defendants permission to file and serve evidence responding on this issue. I do so because, in my judgment, the value of the House is a very significant factor in determining the amount of security to be granted. I therefore consider that the claimant's evidence should be admitted provided the defendants have time to consider and respond to it. The defendants have now had the valuation for over 6 weeks and there is, in my judgment, sufficient time for them to file any evidence as to valuation in time for the CCMC.
32. However, since I am satisfied that £30,000 represents less than the minimum security which the claimant should provide, I propose to direct that it be paid within a short period after the handing down of this judgment. The parties should file representations as to when that time should be.