Neutral Citation Number: [2025] EWHC 837 (Ch)

Case No: BL-2024-000748

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

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

Date: 10 April 2025

Before:

MASTER BRIGHTWELL

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Between :

STEPHEN HERBERT HUNT	**Claimant**
- and -	
(1) OCEANIA CAPITAL RESERVES LIMITED	**Defendants**
(2) IPS LAW LLP	
(3) MR CHRISTOPHER WILLIAM FARNELL	

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Alec McCluskey (instructed by **JMW Solicitors LLP**) for the **Claimant**
The Third Defendant (instructed by **IPS Law LLP**) for the **Second and Third Defendants**

Hearing date: 21 March 2025

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Approved Judgment

This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on Thursday 10 April 2025

Master Brightwell:

1. The second and third defendants apply for relief from sanctions under CPR r 3.9(1), having failed to file and serve a costs budget in Precedent H in accordance with CPR r 3.13(1). Unless the court orders otherwise, any party who fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees: CPR r 3.14.

2. The third defendant, Mr Farnell, is a solicitor and partner of IPS Law. He represented the firm and himself at the hearing of the application, as he did at a costs and case management conference on 26 February 2025. They rely on the first and second witness statements of Mr Farnell himself, dated 26 February and 7 March 2025 respectively. IPS Law is acting for itself and for Mr Farnell in the proceedings.

3. In this claim, the claimant claims to have been defrauded of £1,050,000 which he paid to IPS Law pursuant to an Investment Agreement made with the first defendant. He claims that IPS Law and Mr Farnell have acted in breach of trust or dishonestly assisted a breach of trust, including by dealing with money in the firm's client account for its own benefit, and that they have breached the general prohibition in Financial Services and Markets Act 2000, s 19. Judgment in default has been entered against the first defendant.

4. By CPR r 3.13(1)(b), unless the court orders otherwise, all parties except litigants in person must file and exchange budgets not less than 21 days before the first case management conference. As the first such hearing was on 26 February 2025, budgets were required to be filed and exchanged by 4 February 2025 (the day of the hearing and the day on which the period begins being excluded from calculation: CPR r 2.8(3)). The time for compliance was 4.30pm, as a document served after then is deemed to be served on the following business day: CPR r 6.26.

5. The claimant's budget was filed and served at around 3pm on 4 February 2025. A document purporting to be a Precedent H on behalf of IPS Law and Mr Farnell was served at around 5pm, and also filed on the same day (but after 4.30pm). The document was signed by Mr Farnell with a statement of truth in the prescribed form. If the only default had been that IPS Law and Mr Farnell's Precedent H had been served 30 or so minutes late, the breach would have been neither serious nor significant and relief from sanctions would be granted. Mr McCluskey accepted as much. That is not what this application is about.

6. The problem, identified by the claimant in Mr McCluskey's skeleton argument filed the day before the CCMC, is that the budget filed by IPS Law and Mr Farnell contained figures on its front page which did not match up with those

on later pages, and on the front page the figures bore striking similarity to the figures in the claimant's budget.

7. If IPS Law and Mr Farnell had filed on time a document purporting to be a Precedent H, but which failed to include figures which the budgeting party actually considered were a 'fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate' to incur, the question would arise whether there had in fact been compliance with CPR r 3.13(1)(b). In *Lakatamia Shipping Co Ltd v Nobu Su* [2014] EWHC 275 (Comm), Hamblen J approved comments in an earlier case that a disclosure list would be illusory if it was obvious that it had been prepared in apparent but not real compliance with the obligation to give disclosure. I consider that a costs budget obviously prepared without real compliance with the obligation to complete Precedent H fairly and accurately would similarly be illusory. Such a purported budget could not properly be signed with a statement of truth in the form prescribed for a costs budget by CPR Practice Direction 22, paragraph 2.3.

8. In the event, however, the failure to file and serve the Precedent H on time means that there was a failure to comply with CPR r 3.13(1)(b), without consideration of the terms of the document filed. This is accepted by IPS Law and Mr Farnell, who have filed an application for relief from sanctions accordingly. Consideration of the contents of the document that was filed and served goes to the nature of the breach and of all the circumstances when determining whether to permit the party in breach to rely on a costs budget.

9. Furthermore, no Precedent R budget discussion report was served by IPS Law and Mr Farnell either, as required by CPR r 3.13(2). Before the CCMC, they had also not provided to the claimant or the court a completed part 2 of their Disclosure Review Document.

10. Mr McCluskey's skeleton argument for the 26 February 2025 hearing identified the following issues with the budget served by IPS Law and Mr Farnell's on 4 February 2025:

    i) It is on its face incoherent. The figures on the front page for incurred and estimated costs are almost entirely different to those in the subsequent pages.

    ii) A comparison with the claimant's budget, served on IPS Law a couple of hours earlier, appears to show that in the interval between service of the two budgets, someone had reviewed Mr Hunt's budget and altered the second and third defendant's budget in order closely to match it.

iii) One example of this relates to costs for the Issue phase. IPS and Mr Farnell claim on the front page to have incurred £58,045, i.e. almost exactly the £58,040 incurred by Mr Hunt and shown in his budget. As to that, in the detailed figures for this phase on page 2 of the budget, IPS Law and Mr Farnell claim to have incurred a totally different figure, £30,000 exactly. This includes £10,000 of court fees (the issue fee paid by the claimant, rather than by the defendants).

iv) Another example is Contingency A (being the incurred costs of a proprietary injunction obtained by the claimant in 2024), which is unexplained (in common with all three contingency phases) in IPS Law and Mr Farnell's budget. It shows the same figures as shown in the claimant's budget. Mr Hunt's incurred costs are £56,149.67. IPS Law and Mr Farnell's are said to be £56,053 in the detailed analysis, and £55,600 on the front page. These figures are contradicted by the costs schedule served by IPS Law and Mr Farnell at the conclusion of the proprietary injunction hearing (which was signed with a statement of truth by Mr Farnell) which stated that their total costs for that exercise were £33,846.99, that counsel had been paid £15,000 (as opposed to the £21,000 stated in the budget) and that IPS Law had incurred time costs of £18,550 (as opposed to the £34,750 shown in their budget – which is almost identical to the £34,455 incurred by Mr Hunt and shown in his budget).

v) IPS Law and Mr Farnell's budget is stated on its face to be a 'Costs budget of Claimant dated 19th July 2022'.

11. When one compares the claimant's budget dated 3 February 2025 with that filed by IPS Law and Mr Farnell the similarity of the figures is evident.

Phase	Claimant	Second/Third Defendants
Pre-action	34,310	34,510
Issue	58,040	58,045
CMC	31,327.50	31,540
Disclosure	55,830.52	56,483.52
Witness statements	51,345	52,625
PTR	12,975	13,400
Trial preparation	64,500	67,000
Trial	34,650	36,050
ADR	36,279	36,600
Contingent 1	56,149.67	55,600
Contingent 2	34,703	34,550
Contingent 3	17,050	17,000

12. Mr McCluskey submitted, in my view entirely reasonably, that the suspicion must be that IPS Law and Mr Farnell simply adapted an old budget without any genuine consideration of its appropriateness to this case, and/or added in figures from the claimant's budget which had been served shortly beforehand. Mr McCluskey relied on the incoherence of the budget, the fact that it included a £10,000 issue fee and the lack of any explanation of the assumptions on which the budget was based.

13. When one looks at the subsequent pages of the budget it can be seen that the figures do not match the front page at all. So, for instance, the breakdown shows incurred pre-action costs were £25,600 (and not £34,510 as on the front page), and incurred and estimated costs for disclosure come to £16,744 and £31,750 respectively as opposed to the sums of £24,983.52 and £31,500 shown on the front page. The contingencies are not defined, and no assumptions are provided for them, even though the figures for the contingencies almost match those provided by the claimant (his contingencies being for the incurred costs of an injunction application, and for a committal application and for the costs involved in handing down judgment). The final contingency should, of course, be dealt with in the trial phase (see CPR Practice Direction 3D, paragraph 10(b)), but that is not the material point. It is clear that a human mind made a decision to include three unnamed contingencies in the second and third defendants' budget and to insert figures very close to those provided in the claimant's budget, yet no explanation is made of that by Mr Farnell.

14. Mr McCluskey submitted that the breach was particularly egregious in the case of incurred costs, where the statement of truth from Mr Farnell on the budget could not properly be made.

15. Having received a copy of Mr McCluskey's skeleton argument, Mr Farnell filed and served a witness statement on the day of the February hearing, asking for relief for sanctions. That witness statement sought to explain the lateness (by a few minutes) of the second and third defendants' budget but did not address, other than parenthetically, the more pertinent points raised by the claimant concerning the obvious inaccuracies in the document and the striking similarity of the figures in the parties' budgets.

16. I accordingly declined to deal with the issue of relief from sanctions at the CCMC, but gave IPS Law and Mr Farnell the opportunity to deal with the issues raised by the claimant. I therefore directed they file and serve an application seeking relief from sanctions, together with Precedent R and a witness statement from Mr Farnell addressing the points in the claimant's skeleton argument concerning the content of the Precedent H.

17. Paragraph 7 and 8 Mr Farnell's witness statement of 26 February 2025 (three weeks after the budget had been filed) says the following:

> 'IPS is a small law firm specializing in matters within the sports sector. I am assisted on this matter by Mr Okafor who is responsible for all diary reminders, initial preparation of files, initial preparation of documents of litigation matters. I have been absent from the office on business on throughout the last week and only able to spasmodically work on my laptop due to the lap top malfunctioning to the extent that it has had to be replaced with a new one. The malfunctioning of my laptop had the effect that I was unable to amend documents, read documents clearly or use any software on documents. Mr Okafor is a para legal and understands the urgency of deadlines.'

18. Mr Farnell's second witness statement dated 7 March 2025 says that:

> '6. Prior to the filing deadline for Precedent H and Precedent [R], IPS experienced two critical technical failures that directly prevented timely compliance: (1) a complete laptop malfunction requiring replacement, which prevented me, as Senior Partner, from accessing or modifying these specific costs documents while away from the office, and (2) a software system failure specifically affecting the formatting requirements for Precedent H and Precedent R, making proper submission impossible without correction. Despite these significant technical challenges, IPS promptly filed and served the document only 59 minutes after the deadline at 16:59 on February 4 with the court system, 2025, [*sic*] demonstrating both the trivial nature of the breach under the first limb of Denton and our immediate remedial action, demonstrating our commitment to compliance despite the technical obstacles faced.'

19. He then asserts that the failure to comply was 'due to circumstances beyond [the defendants'] control and that they have since taken steps to rectify the situation', and that the second and third defendants should not be 'unduly penalized for procedural lapses'. The statement repeats the points that IPS Law is a small firm and goes on:

> '12. … I am assisted on this matter by Mr Okafor who is responsible for all diary reminders, initial preparation of files, initial preparation of documents of litigation matters. Due to IPS LAW staffing numbers only one of two people could make the amendments and due to the circumstances outlined, neither person was able to correct the issues. I was at the time, absent from the office on essential business throughout the last week and was severely limited in my ability to work due to critical lap top malfunctions that prevented me from performing any software operations or document amendments. The said Laptop has had to be

> replaced as it was found to be incapable of being repaired. to the extent that it has had to be replaced with a new one. The malfunctioning of my laptop had the effect that I was unable to amend documents, read documents clearly or use any software on documents. Mr Okafor is a para legal and understands the urgency of deadlines.
>
> 13. Unfortunately, Mr Okafor also had a significant issue with the software at the office which allows insertion into the Precedent H documentation and has not had significant experience on this matter. The effect of this was that all there have been characters inserted into the Precedent H which should not be there, and of which would have been extremely frustrating for the Court and entirely confusing.'

20. This is the only acknowledgment that there were incorrect figures in the costs budget. There is no acknowledgment of the fact that the figures were apparently copied from the claimant's budget. There is no acknowledgment of the other points about the detail of the figures set out in the claimant's skeleton argument for the February 2025, i.e. the very points which Mr Farnell had been directed to address in his further witness statement. Paragraph 31 does assert that 'the inconsistencies in the budget are attributed regrettably to documented software malfunctions which directly prevented Mr Farnell from amending the documents entirely'. This gobbledegook does not begin to explain how the figures in the budget nearly match those in the claimant's budget. It would be inherently incredible to suggest that a software glitch could have achieved this without any human intervention.

21. Mr Farnell's second witness statement goes on to say that the problems with the costs budget are that it was filed a few minutes late and that there were unavoidable technical problems beyond his firm's control which 'affected both the hardware necessary for Precedent H and Precedent R preparation, which could not be rectified, together with the specialised software systems required for their formatting'. He then suggests that the breach relating to costs budgets is not serious or substantial, that there would be undue prejudice to the second and third defendants if they were not granted relief from sanctions and thus not able to recover their costs if they successfully defended the claim. Mr Farnell also suggests that the claimant's opposition to the application is opportunistic.

22. At the hearing, a slightly different version of events emerged. During his submissions, Mr Farnell indicated that the preparation of the budget had been carried out by a different member of staff, Ms Zoe Tarrach, who had ceased working for the firm but had continued doing work on a consultancy basis. She had not been mentioned in either witness statement. He also indicated, again not having mentioned it in evidence, that the technical problem

experienced was in the inability due to technical problems to integrate the time recording system with Excel spreadsheets.

23. Mr McCluskey was also critical of Mr Farnell mentioning for the first time in submissions that he had come into the office on 4 February 2025 only to sign the budget. I do not consider this to be obviously inconsistent with his witness statements and do not think it material to the points under consideration. What is material, and remains unaddressed is any explanation of how the figures came to be inserted into IPS Law and Mr Farnell's costs budget. It also unsatisfactory that Mr Farnell does not indicate in his witness statements whether he read the budget before he signed it, nor why he considered that he was able to sign the statement of truth in light of the technical difficulties apparently experienced by his firm.

24. The test for relief for sanctions can be summarised concisely in the following way, as it was by Coulson LJ in a case cited by Mr Farnell, *Diriye v Bojaj* [2021] 1 WLR 1277 at [25]–[26]:

> '25. Rule 3.9 provides as follows:
>
> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need — (a) for litigation to be conducted efficiently and at proportionate cost; and (b) to enforce compliance with rules, practice directions and orders.
>
> "(2) An application for relief must be supported by evidence."
>
> 26. The leading case is *Denton v TH White Ltd* [2014] 1 WLR 3926 noted above. That provides for the now familiar three-stage test. First, the court has to identify and assess the seriousness and significance of the failure to comply with the order in question; secondly, it must consider why the default occurred; and thirdly, it must evaluate all the circumstances of the case.'

25. While many breaches are serious or significant because of the effect they will have on the proceedings, and particularly on the timetable, that is not always so. In this case, the relevant breach was not the delay in filing measured in minutes, but the fact that the costs budget was incoherent, and suffered from the defects identified by the claimant and summarised at [10] above. It contains figures which IPS Law and Mr Farnell accept were incorrect, not least because they have filed a revised budget on which they seek permission to rely instead. That revised budget is itself a problematic document, but I consider that a point to be considered at the third stage of the *Denton* test.

26. The Precedent H budget was filed and served with incorrect figures, apparently closely based upon another party's budget and yet verified by a statement of truth. Furthermore, it appears in light of the evidence given by Mr Farnell, to the extent that his evidence is capable of comprehension, that the person who completed the document (whether the person mentioned in the evidence or the separate individual mentioned in oral submissions) did not believe that the figures shown in the budget were correct. That is, they did not believe that the document when presented to Mr Farnell for his signature contained an accurate statement of incurred costs and a fair and accurate statement of estimated costs. In saying that, I find in the absence of any attempt at explanation, that somebody deliberately inflated the figures on the front page to match those in the claimant's budget.

27. The effect of this was that the budget was illusory in the sense approved by Hamblen J in the *Lakatamia Shipping* case mentioned above. There is some doubt whether the pre-CPR case law on which this statement was made is still applicable (see *White Book* at 3.9.10), but as I have said I do not need to decide that point as there was undoubtedly a breach in this case as the budget was filed and served late. When a document is filed late, the court must be entitled to consider the document in order to determine whether it complies with the procedural requirements applicable to it. Where a costs budget contains admittedly wholly incorrect figures, I consider that this can be taken into account in considering the seriousness of the breach. It seems to me that a party who files an accurate and correctly completed document late commits a less serious and significant breach than does a party who files an inaccurate and incorrectly completed document at the same point.

28. Because the document purporting to be the budget on behalf of the second and third defendants contains figures which are admitted to be incorrect, I consider the breach to be serious and substantial. A case where a statement of truth is signed on a document which is so fundamentally flawed constitutes a very serious breach. It is significant because the integrity of the justice system is compromised when an officer of the court signs a statement of truth on a document where that statement is demonstrably so incapable of being justified. The consequences to flow from that breach depend upon the second and third stages of the *Denton* test.

29. At the second stage, the court considers why the default occurred. All I am able to say is that I can only surmise because the evidence filed by Mr Farnell does not acknowledge the extent of the problem, let alone explain how the figures in the budget came to be inserted in it. Even accepting that the firm had suffered a real hardware failure in the period when the budget was being prepared, this does not explain how the figures mirroring the claimant's budget came to be included. The real problem seems to have arisen in the hour

or two before the budget was filed. No explanation has been provided of what happened in that period, other than that Mr Farnell had to come into the office to sign the budget off.

30. At the hearing, Mr Farnell told me that he had not been able to discuss with Mr Okafor what had happened in that hour or two. In the absence of Mr Okafor having been indisposed throughout the five weeks between the hearings (which was not suggested), I consider this response to have been obfuscatory. In light of the actual problems with the budget, which were clearly identified at the hearing on 26 February 2025, I consider the long explanation of technical problems in Mr Farnell's witness statement to be the equivalent of what Coulson LJ described in *Diriye* at [63] as 'excuses of "the dog ate my homework" variety'. While it is clear that the technical problems experienced by the firm undoubtedly contributed to the problem, Mr Farnell has not addressed the most significant issues at all.

31. I then turn to stage 3 of the *Denton* test, being a consideration of all of the circumstances of the case. This is not a case where prior breaches are relied on, or where the conduct of the case going forward will be affected. There has been some effect, however, as an additional hearing had to be listed in order to deal with the application for relief from sanctions.

32. The real issue is that which I have identified above about the integrity of the budgeting process. It is at this point material to consider also the revised budget upon which IPS Law and Mr Farnell seek to rely. A point I made at the hearing was that the budget for the CMC phase now shows fees of £6,500 for counsel having attended the hearing on 26 February 2025, when counsel did not attend. Mr Farnell accepted that was an error, but did not explain how the error was made. Likewise, one contingency is now amended to make clear that it is for the incurred costs of the injunction application in 2024 (although it also suggests that there is 'further work to conclude' this). Counsel's fee is stated as £20,500. As Mr McCluskey pointed out, the schedule of costs served by IPS Law before the final hearing in August 2024 showed counsel's fee as £15,000. These discrepancies are not just rounding errors.

33. Questions also arise as to how the other phases have been revised since the CCMC. No insight has been provided by Mr Farnell as to how the budget has been revised and, in particular, whether the times for fee earners shown in the 4 February 2025 budget other than on the front page had been properly considered in the first instance and, if so, by whom.

34. Accordingly, I do not consider that the court can have any confidence that the revised budget properly reflects the statement in the statement of truth. That, together with the absence of any explanation for the contents of the first Precedent H, which the order made at the CCMC required to be provided, lead

me to the conclusion that the application for relief from sanctions must be dismissed. I accept that the prejudice to the second and third defendants in being deemed to have filed a budget limited to court fees is a very real one. The court is also required to consider whether dismissal of the application for relief is disproportionate to the breach. I do not consider it to be disproportionate. For relief to be granted would effectively be to sanction both a serious breach and, more significantly, a wholly unsatisfactory response to the breach which has occurred. It would also permit the second and third defendants to rely on a budget which the court still has no confidence has been properly prepared. For the court to do this would undermine the administration of justice.

35. Finally, I would record my view that Mr Farnell's objection that the claimant's opposition to the application was 'opportunistic' was itself misconceived. See *Diriye* at [69].

36. The application for relief from sanctions is therefore dismissed.