Claim No. C50BM046

IN THE COUNTY COURT at BIRMINGHAM
TECHNOLOGY AND CONSTRUCTION COURT

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Tuesday, 31st January 2017

Before:

HIS HONOUR JUDGE GRANT

- -

Between:

(1) ANDREW HEATHCOTE
(2) JAYNE HEATHCOTE

Claimants

-v-

(1) HARJINDER DOAL
(2) SUKHWINDER KAUR DOAL

Defendants

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Suite 204, Kingfisher Business Centre, Burnley Road, Rawtenstall, Lancashire BB4 8ES
DX: 26258 Rawtenstall – Telephone: 0845 604 5642 – Fax: 01706 870838

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MICHAEL STEPHENS, instructed by Shoosmiths, 2 Colmore Square, Birmingham B4 6SH appeared on behalf of the claimants

MR SHAM UDDIN, a solicitor and director of Hamstead Law Practice, 48 Old Walsall Road, Birmingham B42 1NP appeared on behalf of the defendants

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JUDGMENT As approved by the Court

HIS HONOUR JUDGE GRANT:

1. This is an application by the claimants for orders for costs in their favour in respect of the application which they have made for an injunction. The background facts (to which I referred in my ruling of 15th December 2016) include the following.

2. On 7 November 2016, Mr Heathcote received a telephone call from his daughter. She told him that building works were being carried out at number 12 Highfield Road, Great Barr in Birmingham. Mr Heathcote thereafter spoke both with Mr Doal and then with Mr Wilson (who is a consultant with Shoosmiths, the solicitors instructed by the claimants), as a result of which a site meeting was arranged for the following day, 8 November 2016. From his witness statement, Mr Heathcote describes matters as follows:

> "It was immediately apparent that substantial excavation works had been undertaken in the dining room of number 12. It appeared that over three quarters of the concrete floor, including reinforcement and sub-floor aggregate, had been excavated."

Mr Heathcote noticed that Mr Doal's builders had used jackhammers, which he thought were "so big that they were clearly inappropriate for use at a residential property."

3. The parties discussed the nature of the foundation at or about the party wall. One of the builders took off a section of the skirting board and raked out debris, which enabled him to observe that the party wall was actually sitting on the floor slab, which Mr Heathcote understands to be a common floor slab to both properties. Mr Heathcote also asked Mr Doal for evidence of any insurance in respect of number 12. Mr Heathcote told Mr Doal (having been advised by Mr Wilson, who was also in

attendance) that it was necessary for Mr Doal to serve all relevant notices with supporting technical information.

4. A week later, on 15 November 2016, Mr Heathcote received a letter from a Mr Sehdeva of Integrated Designs and Associates Limited ("IDA"), which described IDA as a firm providing architectural services and consultant services. In that letter, Mr Sehdeva stated that:

> "As a part of the proposals, it involves excavation within three metres of your property… required to serve you Notice under Section 6 and this is enclosed."

Mr Sehdeva went on to state that the letter explained in less formal language the works which under the Act and he described the proposed works as follows:

> "To cut the existing floor along the party wall, excavate 450mm below your floor and replace the floor with the new reinforced floor."

In the last paragraph his letter Mr Sehdeva wrote that:

> "Works are anticipated to start in the near future."

That appeared to be inconsistent with the evidence contained in the witness statements of both Mr Heathcote and Mr Wilson. However, the notice which was enclosed under cover of that letter was not accompanied by plans and sections showing the site and depth of any excavation the building owner proposed to make, as provided by section 6(6) of the Act.

5. On 24 November 2016, Mr Wilson sent a detailed email to Mr Sehdeva asserting that the notice failed to comply with the requirements of the Act, and

went on to make a number of other points. On 25 November 2016, Mr Sehdeva enclosed amended notices, this time addressed to both claimants. There then ensued further correspondence, some somewhat intemperate, between Mr Wilson and Mr Sehdeva, to which I refer in some detail below.

6. The procedural history is that the claimants made an application without notice, which was heard on 15th December 2016, when an order was made in the claimant's favour. I directed a return date of 22nd December 2016, on which occasion the claimants appeared by Mr Stephens of counsel, who also appears on their behalf today, and Mr Sham Uddin appeared as the solicitor for the defendants, he having been instructed a few days before, filing a notice of acting on 19th December 2016.

7. On 22nd December 2016, orders were made that the injunction which had been made on 15th December 2016 was to continue in force until 5 o'clock on 31st January 2017. The matter was also to be listed for further consideration on 31st January 2017 at 10.30am. Any application by the defendants to vary or discharge the injunction was to be made by application notice to be served and filed by 4pm on 20th January 2017, and any witness statement in support of such an application was to comply with the provisions of CPR Part 22. The costs of the hearing were reserved to 31st January 2017.

8. It is thus in that context that the defendants' solicitors wrote to the claimants' solicitors by a letter dated 19th January 2017, as follows:

> "Further to this matter please note that, having considered the case, our clients have decided not to contest the injunction. Therefore, the only issue

to be dealt with on 31st January 2017 will be the issue of costs and quantum".

Those solicitors went on to make points about the preparation of material for the hearing and the anticipated length of that hearing.

9. It is, however right to note that the issues to be dealt with today have not been confined to just the consideration of issues of costs. This morning I have already dealt with the terms of the order that is now to be made, continuing the injunction in part, and staying the proceedings in light of the circumstances which have occurred in the interim. Those circumstances include, in particular, the fact that following the return date on 22nd December 2016, the defendants instructed - in place of Integrated Design Associates, who had previously been acting for them - the firm of Pibworth Associates, who are consulting civil and structural engineers practising in Sutton Coldfield.

10. By his letter of 19th January, Mr K A Pibworth of that practice wrote to the claimants enclosing new or fresh notices in relation to the proposed works at number 12 Highfield Road in Great Barr. He continued his letter as follows:

> "Please be aware that I have taken over this matter from Mr Sehdeva. Please be assured that your position and rights as an adjoining owner are fully preserved and respected by this change. I acknowledge your desire to be represented by Mr Wilson of Shoosmiths Solicitors and he has been copied into this letter. I am happy to act as a jointly appointed surveyor. However, I note from correspondence that it is likely that you will wish to appoint your own surveyor under the terms of the Act and fully respect that wish. Notwithstanding this, I am of the opinion that the recent delays have not been in the best interests of either party and recommend that the

interests of both parties are best served by a speedy resolution to this matter".

11. Mr Wilson replied by letter dated 24th January 2017, thanking Mr Pibworth for his letter and confirming that the claimants intended instructing Couch Consulting Engineers to act on their behalf in accordance with the provisions of the Party Wall Act. He continued in paragraph 2:

> "You will be aware that your clients have already undertaken substantial excavation works adjacent to the party wall. My clients have previously voiced their concerns that these works may have caused damage to the property. As part of the current process, Couch will be requested to inspect and report on damage caused by the previous works, as well, of course, as to the possibility of the proposed works causing further damage".

It can thus be seen that matters have now moved on and are now on what hopefully will become a rather smoother course than has heretofore obtained.

12. I turn now to consider some of the relevant correspondence that passed between the parties. This, of course, is against the background of the defendants having commenced works on or about 4th November 2016. The occupant of the claimants' property, who is in fact their daughter, immediately complained of noise. As a result, there was a site visit attended by both parties, together with Mr Wilson, the following day, namely on 8th November 2016. That provides the context to the first letter that Mr Sehdeva of Integrated Designs wrote to the first claimant, dated 15th November 2016. As already noted, Mr Sehdeva described the proposed works as follows: "To cut the

existing floor along the party wall, excavate 450mm below your floor and replace the floor with a new reinforced floor".

13. Under cover of that letter, Mr Sehdeva enclosed (1) a consent/further information form; (2) a line of junction notice stating that, "It is intended to build on the line of junction of the said lands a new floor and to tie into the existing floor slab"; and (3) a notice entitled "3 metre/6 metre notice", stated to be served under the provisions of section 6 of the 1996 Act, the material parts of which provide as follows:

> "The owners hereby serve you with notice that under section 6(1) it is intended to build within 3 metres of your building and not to a lower level than the bottom of your foundations, by carrying out the works detailed below after the expiration of one month from the service of this notice.
>
> IT IS NOT PROPOSED TO SAFEGUARD THE FOUNDATIONS OF YOUR BUILDING AS IT WILL NOT BE NECESSARY".

14. The notice continues:

> "The accompanying plans and sections show the site and the overall development. These are not our plans. The intended works are to excavate for and construct concrete foundations and floor 100mm away from the boundary of your building to a depth of 450mm below floor level, which will be approximately level with the underside of your foundations".

While that notice is itself not dated, it appears from Mr Heathcote's second witness statement dated 16th December 2016 that it was enclosed under cover of that letter dated 15th November 2016.

15. On 24th November 2016 Mr Wilson sent a long and detailed email to Mr Sehdeva (pages 8 to 9 of the exhibit to his first witness statement dated 13th December). In paragraph 3, he wrote as follows:

> "We note that the proposed works are described in your letter as 'to cut the existing floor along the party wall, excavate 450mm below your floor and replace the floor with a new reinforced floor'. However, the defective notice states that the intended works are 'to excavate for and construct foundations and floor 100mm away from the boundary of your building to a depth of 400mm below floor level which will be approximately level with the underside of your foundations'. The defective notice also refers to the works as being 'not to a level lower than the bottom of your foundations'".

16. Mr Wilson continued:

> "Given that works have already been undertaken in breach of the Act immediately adjacent to the party wall, the second of the work descriptions above and its reference to 100mm is clearly wrong. Further the descriptions are contradictory in their references to the depth of the excavation. I was present when your client's builder exposed the floor slab at the party wall itself and it became apparent, clearly for the first time, that the floor itself acts as the foundation for both properties. That being the case, please explain your reference to 'approximately level with the underside of the foundations' and 'excavate 450mm below your floor', given that the floor is the foundation".

17. In paragraph 4, Mr Wilson wrote:

> "The defective notice refers to, 'The accompanying plans and sections show the site and overall development. These are not our plans'. No such plans or sections were enclosed with your letter. Please forward copies electronically to me, together with details of who produced them. It was abundantly clear from the inspection of the works by the client... that no proper survey had been undertaken to identify the nature of the existing foundation at the party wall and that the works were apparently being undertaken on the bare assumption that a strict foundation existed. If it is the case that a method statement, is now being produced please forward a copy together with all associated plans. Any future notice must set out properly the proposals for the works, including plans and sections of the proposed excavation and the reinforced floor".

In paragraph 7, he asked for details of any insurance policy that was in place.

18. The following day, 25th November 2016, Mr Sehdeva sent amended notices. They were amended firstly so as to be served upon both the claimants (instead of just upon Mr Heathcote, as had the first notice been). Secondly, a comparison of the two notices shows that the sentences "The accompanying plans and sections show the site and overall development. These are not our plans" have now been omitted, although the revised notice still states that the intention is to build "not to a lower level than the bottom of your foundations", and, "to excavate and construct concrete foundations and floor 100mm away from the boundary of your building".

19. By letter dated 29th November 2016 (page 19 of the exhibit) Mr Wilson wrote to Integrated Designs, again setting out the ways in which he contended the revised

notices failed to comply with the provisions of the Act. Mr Sehdeva replied by email of 1st December 2016 as follows:

> "Dear Mr Wilson, further to your email, I note its contents. Your previous email and this email explains fully to me, and to any other party wall surveyor that you may forward these emails to, you have no knowledge of the Party Wall Act applications of this situation. You may be a solicitor but you really do lack insight to what is before you. I will offer the following comments as a little relief to your frustration, as I really do not need to be addressing anything with yourself. The reissue of notices stand as correct and failure to the appointment of a party wall surveyor by your client will allow me to act ex parte and anything done by me shall be as effectual as if I am the joint/agreed party wall surveyor for both parties, which you really may not want. Procrastinate at your own peril. Kind regards. Paramjit Sehdeva".

20. On 5th December 2016 Mr Wilson responded (page 23). He did not accept the points which were being made by Mr Sehdeva, and regarded the suggestion that appointment of Mr Sehdeva to act in an 'ex parte manner' may be what the claimants "really may not want" as being unprofessional in manner. That drew an instant response from Mr Sehdeva by email the same day, 5th December 2016, timed at 16.52. In paragraph 3 of that email Mr Sehdeva wrote as follows:

> "Under section 6 of the Act, my appointing owner has served the requisite notice and awaits your client's reply. If, after 14 days, he fails to appoint a surveyor or reply to the notices then according to section 5 a dispute has arisen. I will serve a further ten-day notice and if he still insists on not

appointing a surveyor he is in breach of the Act. The other party, i.e., my appointing owner, under section 10(4) (a) and (b) can make an appointment on his behalf. Under section 7, I will effectively become the agreed surveyor, requiring access to your owner's property and will act ex parte and issue an ex parte award".

21. In the next paragraph, Mr Sehdeva continued:

> "If your client refuses to give me access, then he is guilty of an offence as described in section 16 and we will proceed with the works. You will not be able to stop the works without a court injunction and we can show that the procedure carried out is fully compliant with the Act. Your client is not entitled to recover any of your expenses".

22. The same day, namely still on 5th December 2016, Mr Wilson wrote a letter directly to the defendants (pages 32 and 33). In paragraph 3, he stated that:

> "At the meeting, *[and that is a reference back to the site meeting of 8th November]* it was agreed... that works would stop and that proper notice would be given in accordance with the Act and agreement sought as to the nature of and structural adequacy of the works already undertaken and those proposed".

23. Mr Wilson referred to subsequent correspondence in which he had made it clear that the notices which had been served by Mr Sehdeva were invalid as they had not been served in accordance with the requirements of the Act, and he continued on the second page, penultimate paragraph, as follows:

> "You will note that my clients are not prepared to acknowledge that proper notice has been given in accordance with the express requirements of the Act. I respectfully suggest you discuss the matter with Mr Sehdeva or another professional with experience of party wall issues. As no valid notice has been given, works must not be undertaken, in breach of the requirements of the Act. If they are, I have instructions to apply to the court for an injunction restraining such works".

In his oral submissions this morning, Mr Stephens submitted that no response was received to that letter.

24. On 8th December 2016, Mr Wilson sent another long email to Mr Sehdeva (pages 34 and 35). At the bottom of the first page of that email he wrote as follows:

> "As no valid notice has been served, any statutory requirements or timescales are not applicable. As you have made threats on a number of occasions that you will act ex parte to the detriment of my clients I require your client's written confirmation that you accept that the current notice is invalid and you undertake not to proceed, as you allege you are able to, ex parte. On receipt of a valid notice, together with insurance details relating to both the proposed works and those completed already, my client will assess the nature of the proposed works and if relevant appoint their own surveyor. If I do not receive the confirmation/undertaking requested above by close of business on Friday, 9th December 2016, then my client has instructed me to issue injunctive proceedings in the court next week. Such proceedings will also have cost consequences, which your clients may wish to discuss with a legal advisor now".

25. Again, in the course of his oral submissions this morning, Mr Stephens submitted that there was no response received to that email. However, on 8th December 2016 - that is the same day - Mr Sehdeva wrote a letter directly to both claimants (that is at pages 41 and 42). In the second paragraph, he wrote as follows:

> "If you fail to appoint a surveyor, then the building owner can appoint one for you under the Act and it has been intimated that it will be ourselves. This means that I will need to visit and survey your property and inspect the condition. If you refuse access, then I will carry out whatever inspection I can and issue an ex parte award as I will be acting ex parte to the Act. You will then have 14 days to appeal my ex parte award in the County Court".

26. In paragraph 3 of his letter Mr Sehdeva wrote:

> "Your legal advisor, Mr P Wilson, whose position in this matter is still unclear, has not understood the procedural matters and if you are minded to pursue any alleged damage or court injunction then you are at liberty to do so".

27. In paragraph 5 (which is the bottom paragraph on the first page of that letter), he wrote:

> "...the reason why no plans have been submitted with the notices is that at the time of our appointment no plans had been prepared as works being carried out were under a building notice and under section 6(1) (b) we have described the works will not be at a lower level than the bottom of your foundations. This means it could be that at the end of the procedure, if the

two surveyors concur, that the Party Wall Act may not be applicable. This is yet to be tested".

That, therefore, was the state of matters when the matter came before the court on 15th December 2016.

28. I turn now to consider what the proper order to costs should be. CPR rule 44.2 (2) provides (a) that if the court decides to make an order about costs, 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. The defendants, by their solicitor's letter of 19th January 2017, do not contest the making of the injunction, both initially and as continued on 22nd December 2016. Today, Mr Uddin, rightly in my judgment, did not oppose the continuation of that injunction as regards the provision of information relating to excavations carried out to date.

29. The claimants are plainly the successful parties in the application. The reasons advanced by Mr Uddin for there not to be an order for costs adverse to his clients are as follows. Firstly, he submitted that Mr Sehdeva of Integrated Designs did not state that works would recommence. The difficulty with that submission lies in the language of Mr Sehdeva's own emails and letters. In his email of 5th December 2016, he stated in terms that, "...if your client refuses to give me access, he will be guilty of an offence and we will proceed with the works. You will not be able to stop the works without a court injunction". That, to my mind, either is, or is so close as to make no material difference, an indication that the defendants intended to proceed with works.

30. Then, three days later, in his letter of 8th December 2016, Mr Sehdeva stated that he would need to visit and survey the property and make an inspection of condition, and that if the claimants refused access he would carry out whatever inspection he could,

issue an ex parte award, with the consequence that the claimants would then have 14 days within which they could appeal to the court. In my judgment, by using that language, Mr Sehdeva was describing a form of procedure which could have been reasonably construed by the claimants as bringing about the consequence that work would be carried out. It is to be noted that in his email of 5th December 2016, Mr Sehdeva stated that the claimants could not stop work without obtaining an injunction, and in his letter of 8th December 2016 Mr Sehdeva stated that the claimants could not stop the process that he had outlined without commencing an appeal to the County Court. In those circumstances, in my judgment, the first point advanced by Mr Uddin is not made out.

31. Mr Uddin's second point was that under the Party Wall Act there is a procedure for resolving disputes which could and/or should have been used by the claimants. But that raises the nice point whether a dispute is deemed to have arisen under section 6(7) if the building owner has not served a notice which complies with the requirements of subsection (6). In my judgment, in the circumstances of this case, the claimants were entitled to make an application for an injunction, and acted reasonably in doing so.

32. The third point which Mr Uddin identified was that after the return date of 22nd December 2016, the defendants acted reasonably. There may be force in that point, but that is not a reason why the defendants should not pay the claimants' costs of and occasioned by the application. The substantive order to costs is therefore that the defendants are to pay the claimants' costs of and occasioned by the application for an injunction.

33. I therefore turn to consider the second limb of the application, namely, what is the appropriate basis upon which such costs should be assessed? Mr Stephens submits that

that should be upon the indemnity basis. At the conclusion of oral submissions this morning, Mr Stephens accepted that such an order or direction should properly apply only up to and including the hearing of 22nd December 2016. In my judgment, that was a concession (if it be such) which was rightly made.

34. As regards the criteria for making an order that costs are to be assessed on the indemnity basis: in the notes to CPR Part 44 as it was before 1st April 2013 (which are set out at page 1503 of the 2016 edition of 'Civil Procedure') the following text is set out:

> "The making of a costs order on the indemnity basis would be appropriate in circumstances where the facts of the case and/or the conduct of the parties was such as to take the situation away from the norm";

citing the decisions in *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Ham Johnson (A Firm) CA* and *Betesh & Co v Salisbury Hammer Aspden & Johnson [2002] EWCA Civ 879* in support of that summary.

35. In his written submissions prepared for today's hearing, Mr Stephens has referred me also to the decision of His Honour Judge Keyser QC in *Kellie & Anor v Wheatley & Lloyd Architects Limited [2014] EWHC 2886 (TCC)* where the learned judge referred to the earlier decision of Tomlinson J in *Three Rivers District Council & Ors v The Governor & Company of the Bank of England [2006] EWHC 816 Comm,* where Tomlinson J had formulated guidance, the second paragraph of which provides:

> "The critical requirement before an indemnity order can be made in the successful defendant's favour is that there must be some conduct or some circumstance which takes the case out of the norm".

That appears to be the same point as that made in the passage of the notes in 'Civil Procedure' to which I have already referred. The reference in the extract from Tomlinson J's judgment to an order being made in the successful defendant's favour applied to the facts of that particular case. The point being made however is one of general application, irrespective of which party makes the application.

36. The notes in 'Civil Procedure' go on to give examples of circumstances where it would be appropriate to award costs on an indemnity basis. They continue: "It is not always necessary to show deliberate misconduct. In some cases unreasonable conduct to a high degree would suffice". That point is reflected in the third paragraph of the extract from Tomlinson J's judgment which provides as follows:

> "Insofar as the conduct of the unsuccessful party is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness".

I shall take as my guide the expression used by the editors in 'Civil Procedure', namely "unreasonable conduct to a high degree".

37. Those notes then go on to provide examples of circumstances where the court had to consider whether or not to make such an order. The first is the case of *Igloo Regeneration (GP) Limited and others v Powell Williams Partnership [2013] EWHC 1859 (TCC)*, a decision of Akenhead J in a defamation action, where he found that refusal by a claimant to accept all offers of settlement, including one of the provision of an unreserved apology and payment of costs to date, did come within the description of unreasonable conduct to a high degree and thus ordered indemnity costs.

38. The second is the case of *Select Healthcare (UK) Ltd v Cromptons Healthcare Ltd and Another [2011] 1 Costs LO 58.* Here a party changed its case with the consequence that the paying party's case was expressed with decreasing, rather than with increasing, clarity. Mann J regarded that as a practice which had to be stopped, particularly so in the modern context of the CPR where it is clear that litigation needs to be conducted efficiently, and thus with appropriate regard to costs. Mann J found that the paying party's conduct in the circumstances of that case was such that it should be penalised by an award of costs assessed on the indemnity basis.

39. Perhaps closer to the circumstances in the present case were those in *Williams v Jervis (Lex Komatsu) [2008] EWHC 2346 (QB),* where Roderick Evans J had to consider a case in the Queen's Bench Division where the experts on behalf of the defendant had not merely performed poorly as witnesses, but had not addressed their responsibilities or conducted themselves properly as expert witnesses. In my judgment, one does not need to get to the circumstances of a full trial in order to have regard to those principles and, here, the learned judge's approach in that case provides helpful guidance.

40. Mr Stephens identified the following factors as those which he submitted took the present case and circumstances out of the norm. First was the very fact that work began without the provision of any notice. In my judgment, the whole point of the Party Wall Act is to provide for a regime of the service of notices and counter-notices, the appointment of surveyors, the provision of an award, all of which is intended to be done before works are commenced. The failure by the defendants to comply with the provisions of the Act was a matter which in my judgment did take this case and its circumstances out of the norm. I regard this as a serious matter.

41. Mr Stephens' second point was that once information was provided by the defendants through the medium of Mr Sehdeva it was inaccurate and/or inconsistent. While the material from Mr Sehdeva indicated that excavations were not going to go below the depth of the claimant's foundations, the new material from Mr Pibworth of Pibworth Associates shows exactly the opposite, and it does so to a material and significant extent. It follows that Mr Sehdeva was wrong to state in both the original 3 metre/6 metre notice and its subsequent revised notice that it was intended to build "...within 3 meters of your building and not to a lower level than the bottom of your foundations". That statement or assertion was both wrong and misleading.

42. Mr Stephens further submitted that there were significant internal inconsistencies in the material which Mr Sehdeva produced. That was in particular in two respects:

(1) Firstly, as regards location, ie, where the excavation was to be carried out. In his letter of 15th November 2016 he stated that the proposed works were to cut the existing floor along the party wall. That is consistent with what he stated in the line of junction notice where he stated it is intended to build on the line of junction but in the original 3 metre/6 metre notice, Mr Sehdeva stated that the intended works were to excavate for and construct concrete foundation floor 100mm away from the boundary of your building.

(2) Secondly, as regards the depth of excavation. In his letter of 15th November 2016, Mr Sehdeva stated that the proposed works were "...to excavate 450mm below your floor", whereas in the line of junction notice he stated that the intention was to "tie into the existing slab". As already observed, in both versions of the 3 metre/6 metre notices, he stated that the intention was "...to build not to a lower level than the bottom of your foundations".

43. Thirdly, Mr Stephens submits that the tone and content of some of the correspondence from Mr Sehdeva was intemperate. Mr Wilson, as I have already noted, regarded certainly some of it as being unprofessional and Mr Stephens relies on the various messages to which I have already referred.

44. Mr Uddin makes the following submissions in opposition. Firstly, he submits that the defendants themselves have acted reasonably, certainly once they become aware of the provisions of the Party Wall Act and secondly, in particular, since the hearing on 22nd December 2016, leading in particular to the instruction of Pibworth Associates. I accept that submission. He also submitted that Mr Sehdeva, while incompetent, was not guilty of unreasonable conduct. I do not accept that submission. In my judgment, to commence work without serving the appropriate notice under the 1996 Act is a serious matter, such that it takes the case and its circumstances out of the norm. The norm is to comply with the Act and serve the relevant appropriate notices.

45. I also find that material parts of the documents which were produced by Mr Sehdeva were inaccurate as regards the description of the depth of the foundations and contained material internal inconsistencies in the manner that I have already described.

46. I shall thus direct that the claimant's costs are to be assessed on the indemnity basis up to and including the return date of 22nd December 2016. They are thereafter to be assessed on the standard basis. In those circumstances, it is appropriate for there to be a detailed assessment. The order will therefore be that the claimants' costs will be subject to a detailed assessment if not agreed. I shall now hear from both Mr Stephens and Mr Uddin as regards the making of an appropriate interim payment on account of those costs.

[*The judge then heard further submissions and continued]:*

47. I have regard to the points which Mr Uddin has made and in some or all of them there may be some force in them. They are exactly the sort of points that one would expect to be taken up on a detailed assessment but I think given that the application is put at a relatively modest level, ie, at 50%, or rather under 50% in fact, of the total shown, although with Mr Uddin's point about the arithmetic calculation of work done on documents it may be very close to 50%, I think that that is the right sort of order. So, I will exercise somewhat the judgment of Solomon, in the sense I will award by way of interim payment the figure which the claimants seek, namely £10,000 plus VAT, £12,000 in total, but I will accede to Mr Uddin's application that such sum be paid in 28 days.

[Hearing ends]