Case No: **BL-2019-001788**

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: **27 June 2024**

Before :

Mr Justice Fancourt

- -

Between :

HRH The Duke of Sussex

Claimant

- and -

News Group Newspapers Limited

Defendant

- -
- -

Anthony Hudson KC and Ben Silverstone (instructed by **Clifford Chance LLP**) for **News Group Newspapers Limited**
David Sherborne and Ben Hamer (instructed by **Clintons**) for the **Group 3 Counsel**

Hearing dates: **27th June 2024**

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APPROVED JUDGMENT on COSTS

Mr Justice Fancourt **Thursday, 27 June 2024**

Judgment on costs by **MR JUSTICE FANCOURT**

1. I have to determine now the costs of NGN's application. The first question is whether I can identify who has been the successful party. I can, and the successful party to my mind is undoubtedly NGN, although it has not succeeded on the whole of its application.
2. The next question for me, then, is whether to make some different order, or adjustment to the order for costs that would otherwise be made that the unsuccessful party pay the successful party's costs. Mr Hudson, frankly and straightforwardly, recognises that it can be said that there has been a significant degree to which NGN has not achieved what it set out to achieve. The draft order attached to the application notice sought, at paragraph 1(a), the same relief as has pursued right up until today, when its scope was reduced quite significantly in the course of argument this morning.
3. Paragraphs 1(b) and 1(c) are a different form of relief, but essentially similar to the relief that has been pursued at the hearing today in relation to documents relating to the claimant held by Harbottle & Lewis and the Royal Household, although in both cases the relief originally sought was significantly more extensive than that which I have eventually granted. The description and the categories were cut down as a result of observations made by Harbottle & Lewis as to the surprising breadth of the orders that were being sought.
4. Paragraph 1(d) was an application to search documents held by Clintons in their files. That was a matter that has not been pursued.
5. I agree with Mr Sherborne to the extent that he says that NGN framed its application too broadly, and I consider that there should be some adjustment to reflect that. In addition to the breadth of the relief that was sought and not obtained, there is a question of prematurity. The application was issued on 4 April following a letter written by NGN's solicitors on 18 March asking for various confirmations to be given and warnings that an application might be made. A

holding response was sent on 26 March by the claimant's solicitors saying they would respond shortly. On 4 April, the application was issued in any event and the response from the claimant's solicitors' response did not come until 3 May, a month later.

6. In my view, NGN was justified in deciding that the time had come where an application should be made. There had been previous correspondence which took a great deal of time to progress and not much progress had been made. The assessment that the defendant should not wait longer was not an unreasonable one, given that this matter obviously had to be heard before the summer vacation. But in any event, regardless of prematurity, if NGN had waited until 3 May for the claimant's solicitors' response, they would still have been in the position of needing to issue the application to obtain the relief that they have succeeded in obtaining today. Therefore, it seems to me that the prematurity point goes nowhere.
7. Further points made by Mr Sherbourne are that, as of last Friday, a further head of relief sought was introduced into the draft order, relating to the documents that were sent by the Royal Household to the claimant in 2020, and then after explanations were provided about what those documents comprised only a small part of the application was pursued, which in the end was unsuccessful. I don't find fault with NGN for introducing the new head of relief sought, because it arose from a letter of 11 June that they could not have predicted. But it is fair to say that a further point was raised and it was then either abandoned or not succeeded on, so that is another, more minor, point in the claimant's favour.
8. It is then suggested that, in relation to the costs of seeking orders that letters be written to Harbottle & Lewis and the Royal Household, I should not make any order for costs until we wait and see whether those letters produce any response; the implication being that if they don't, it was all a waste of time and they should not have their costs. I'm not at all attracted to that approach. First because the defendant succeeded in the argument and in obtaining the orders that it has been seeking, at least since last Friday; and secondly, because taking the approach that

Mr Sherborne urges would only create a kind of perverse incentive for the recipients of the letters to do nothing and thereby influence what the likely outcome of the costs exercise will be. That strikes me as wrong in principle and I don't think that any adjustment should be made in relation to the costs of that relief.

9. Looking at the matter in overall terms, therefore, taking account of the extent to which NGN has not succeeded on its application, including both the original wording of the order and the new point introduced, it seems to me that the fair order in the circumstances is that the claimant should pay NGN two-thirds of their costs of the application, to be assessed on the standard basis if not agreed.