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Grijns v Grijns & Ors [2025] EWHC 2853 (Ch): When Mediation Becomes a Siege Engine, Not a Peace Treaty

Grijns v Grijns & Ors [2025] EWHC 2853 (Ch)

Date: 5 November 2025

Judge: Master Bowles (Sitting in Retirement)

Key Words:

Grijns v Grijns, Proprietary Estoppel, Indemnity Costs, Litigation Conduct, Mediation, Alternative Dispute Resolution (ADR), Trespass, Mesne Profits, Chelsea Property, Concocted Evidence, Anvil for Settlement, Mental Capacity, Contempt Proceedings, Family Dispute

Summary

The judgment in **Grijns v Grijns** primarily addresses the determination of legal costs following the total dismissal of Andrew Grijns' claims against his mother, Janice, and his three brothers [1, 7-8]. Andrew sought a two-thirds beneficial interest in a **£3.85 million Chelsea property** based on proprietary estoppel but the court found his evidence regarding parental assurances to be **"invented"** or **"concocted"** [3-4, 48, 51].

A central point of contention in the costs hearing was Andrew's argument that the Defendants should be penalised for an **unreasonable failure to engage in Alternative Dispute Resolution (ADR) or mediation** [25-28]. The court rejected this, finding that Andrew had imposed **"high-handed" and "inappropriate" conditions** on the mediation process, such as refusing to allow his brothers—who were also defendants—to participate [79-83]. Consequently, the court ordered Andrew to pay the Defendants' costs on an **indemnity basis** [107-108].

Key Themes (Focused on Mediation):

1. **Unreasonable Conditions**: The impact of a party demanding the exclusion of relevant co-defendants from the mediation table [79-80, 86-87].
2. **The Timing of ADR**: Whether it is reasonable to delay mediation until after the disclosure of evidence has occurred [87-88, 95-96].
3. **"Silent Non-Engagement"**: Distinguishing between a party who ignores a request to mediate (which warrants a penalty) and one who engages but cannot reach an agreement due to the other side's conduct [31-32, 105-106].

4. **Unrealistic Settlement Offers**: The role of Calderbank offers that are "well beaten" at trial and whether they constitute a serious basis for negotiation [59-61, 73].
5. **Vulnerability and Support**: The right of an elderly or ill defendant to have family support during ADR [80-81].

Background

The underlying dispute involved Andrew's claim that he was entitled to the Chelsea property where he had lived since 1999 [3-5]. Following his total loss at trial, Andrew argued he should not have to pay the Defendants' costs [7]. He claimed that despite his own repeated offers to settle—requesting between **25% and 55% of the property's value**—the Defendants had failed to engage in mediation or respond adequately to his offers [59, 66-67]. The sources reveal a history of intense family antipathy, with Andrew even challenging his mother's **mental capacity** and issuing **contempt proceedings** against her shortly before trial to exert pressure [18-19, 51-52, 55].

Legal Issues and Analysis

The court analysed the mediation dispute through several legal lenses:

1. **The *Halsey* and *PGF II* Principles:** Under the sources, an unreasonable refusal to mediate (*Halsey*) or a failure to respond to a mediation request (*PGF II*) can lead to costs penalties [22-23, 25-27]. However, the Master found the Defendants were **"far away" from silent non-engagement**; they had actually initiated the idea of mediation as early as August 2023 [79, 105-106].
2. **Claimant's Obstruction:** The mediation failed to progress because Andrew refused to mediate with his brothers present, despite them being defendants with a direct interest in the outcome [79-80]. The court found Andrew's refusal to allow his brother Derek to support their elderly mother (who held her power of attorney) was **unreasonable** [79-81].
3. **Sufficiency of Disclosure:** The Defendants argued that mediation should follow disclosure so that it could be "meaningful" [95-96]. The court agreed this was a **"wholly reasonable stance"**, but subsequent delays in disclosure by both sides meant the "space" for mediation before the trial date effectively vanished [95-96, 103-105].
4. **Unjust Settlement Terms:** Andrew's lowest settlement offer would have cost the Defendants approximately **£900,000** [68]. Because the claim was "wholly unfounded" and Andrew recovered nothing, the Defendants were not unreasonable in refusing to treat these unrealistic offers as a basis for negotiation [64-65, 73-75].

Conclusion

The Master concluded that the Defendants' conduct regarding mediation was **reasonable** and did not warrant a costs penalty [98-99, 105-106]. It was Andrew who had "wrongly held out" against an effective mediation by imposing inappropriate conditions [73]. Because the claim was based on **concocted evidence** and pursued as an **"anvil for settlement"** rather than on its merits, the court found Andrew's conduct to be "outside the norm" [42-43, 51, 56-57]. He was ordered to pay the litigation costs on an **indemnity basis**, though post-judgment costs were limited to the standard basis [107-108].

Key Takeaway:

*A party cannot successfully seek a costs penalty against their opponent for a "failure to mediate" if they themselves have frustrated the process by imposing **unreasonable conditions** or if they are pursuing a **dishonest claim** [79-80, 105-106]. Mediation is not a tool to force a "ransom"*

settlement; if a claimant's offers are vastly higher than what they achieve at trial, a defendant is justified in refusing to negotiate.

***Analogy for Mediation Conduct**: Imagine two people agree to meet at a table to settle a dispute but one person insists the other's legal guardian cannot enter the room and that the meeting must happen before any facts are checked. When the meeting fails to happen, that person cannot complain to the referee that the other side was being "uncooperative." In this case, Andrew tried to set the rules of the meeting in a way that made it impossible for the Defendants to attend fairly [65-66, 74].*

Parting Thoughts

The modern law of ADR has developed in a clear and increasingly confident arc.

It began with **Halsey***: a cautious court, enthusiastic about settlement, but anxious not to trespass on the constitutional right of access to a trial. The message was encouragement, not compulsion — and a warning that costs sanctions would follow only where a refusal to mediate was unreasonable.*

PGF II *sharpened that message. Silence, the Court of Appeal said, is not a strategy. A party who simply ignores a serious proposal to mediate is very likely to be behaving unreasonably and should expect to pay for that luxury.*

Then came **Churchill v Merthyr Tydfil County Borough Council** *[2023] EWCA Civ 1416, where the Court of Appeal finally swept away the lingering myth that ADR must always be voluntary. The court confirmed — in terms — that it can stay proceedings or order parties to engage in non-court-based dispute resolution, provided that this does not impair the essence of the right to a trial and is proportionate to a legitimate aim. Courts are no longer merely suggesting ADR from the sidelines; in appropriate cases, they are entitled to direct traffic towards it.*

But **Grijns** *shows the other side of that coin.*

Even in a post-Churchill world, ADR is not a crowbar. The court may insist that parties go to the table — but it will not reward a party who rigs the seating plan, bars the relevant participants, and then complains that no agreement was reached.

This was not a case about a brave claimant being shut out of the warm, inclusive world of mediation. It was a case about someone turning "mediation" into a bespoke obstacle course and then protesting that nobody wanted to run it.

Master Bowles' judgment is a brisk reminder that ADR is not a stage prop to be wheeled on when the script demands moral high ground. It is a process. A real one. With other people in the room. Including, ideally, the actual defendants — and, in this case, the elderly mother whose interests were supposedly at the heart of the drama, and who was quite entitled to have family support rather than being left to face proceedings like a contestant on a particularly joyless game show.

Andrew Grijns did not lose because he failed to mediate. He lost because his claim was found to be invented, his litigation strategy was to use that invention as an "anvil for settlement", and his approach to ADR was to set conditions so lopsided that only one person could ever "win" the negotiation — and that person was him.

The court's treatment of the mediation point is refreshingly unsentimental. There is a world of difference between silent non-engagement (PGF II) and active engagement with an unreasonable counterpart (Grijns). The defendants were in the second category. They proposed mediation. They wanted it to be informed by disclosure. They wanted the right people in the room. What they declined

to do was pay a large sum of money to make a baseless claim go away.

And so we arrive at the real modern position:

- ***Halsey** tells us courts encourage ADR.*
- ***PGF II** tells us you cannot ignore it.*
- ***Churchill** tells us courts can, where appropriate, require it.*
- ***Grijns** tells us you cannot weaponise it.*

Or, put more simply: mediation is a table, not a battering ram. If you insist on bringing siege equipment to the negotiation, do not be surprised when the court decides you can also pick up the entire repair bill — and hands it to you with the indemnity setting turned on.

#GrijnsVGrijns #ProprietaryEstoppel #IndemnityCosts #LitigationConduct #Mediation #ADR #FamilyLitigation #ChelseaProperty #Trespass #MesneProfits #CivilProcedure #LegalCosts #UnfoundedClaims #InheritanceDispute #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Criteria for Indemnity Costs and Litigation Conduct

1. ***Three Rivers District Council v Bank of England* [2006] 5 Costs LR 714** *– This authority provides the core guidance for awarding indemnity costs, stating the criterion is unreasonableness rather than moral condemnation. It identifies that claims which are speculative, weak, opportunistic, or thin—or those irreconcilable with contemporaneous documents—are "outside the norm" and justify indemnity assessment.*
2. ***Hosking v Apax Partners LLP* [2018] EWHC 2732 (Ch), 5 Costs LR 1125** *– Relied upon to identify cases where litigation is pursued as an "anvil for settlement". This principle applies when a claim is used as a medium to exact a settlement unrelated to the actual legal merits of the case.*

Alternative Dispute Resolution (ADR) and Mediation

1. ***PGF II SA v OMFS Co Ltd* [2013] EWCA Civ 1288, [2014] 1 WLR 1386** *– This judgment establishes the "general rule" that a silent failure to respond to a serious request to mediate is normally unreasonable. However, it clarifies that this is not an invariable rule and a failure to mediate is merely one aspect of overall conduct to be weighed in the costs balancing exercise.*
2. ***Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002** *– A seminal decision establishing that an unreasonable refusal to mediate can justify departing from the standard costs order. The sources highlight that it is not unreasonable to refuse mediation if a party properly considers a claim to be unfounded and wishes to contest it rather than "buy the claimant off".*
3. ***Gore v Naheed* [2017] 3 Costs LR 509** *– Used to illustrate that a court may decline to impose a costs penalty for a failure to mediate if the specific facts of the case suggest the refusal was not unreasonable.*
4. ***Garritt-Critchley and Others v Ronnan and Solarpower PV Ltd* [2014] EWHC 1774 (Ch), [2015] 3 Costs LR 453** *– Cited regarding the potential for successful mediation even in circumstances that appear unfavourable or where the parties seem far apart.*
5. ***DSN v Blackpool FC (Rev 1)* [2020] EWHC 670 (QB), [2020] Costs LR 359** *– Relied on to*

emphasise the importance of parties complying with specific court directions regarding ADR.

6. ***Churchill v Merthyr Tydfil County Borough Council*** **[2023] EWCA Civ 1416** *– Confirms that the court has jurisdiction to stay proceedings or order parties to engage in non-court-based dispute resolution, provided this does not impair the essence of the right to a trial and is proportionate. Marks a decisive shift away from the old assumption (derived from Halsey) that compulsory ADR is impermissible.*

Settlement Offers and Engagement

1. ***Kiam v MGN Ltd No.2)*** **[2002] EWCA Civ 66** *– Establishes that while an unreasonable refusal to accept a settlement offer can lead to indemnity costs, this is rare and requires extreme circumstances. The judgment notes that if a party achieves a result at trial significantly better than the offer they refused, their conduct is generally reasonable.*
2. ***OMV Petrom SA v Glencore International AG*** **[2017] EWCA Civ 195** *– Reiterates the obligation of litigants to make reasonable efforts to settle and respond to offers. However, it clarifies that parties are not required to waste time and costs engaging with "wholly unrealistic" offers, as this would encourage "ransom" settlements of unfounded litigation.*

Explanatory Costs Note

To understand the difference between ***Standard Costs*** *and* ***Indemnity Costs*** *(as discussed in Three Rivers), imagine a restaurant bill. Under* ***Standard Costs****, the loser pays for the winner's meal, but only for "reasonable" items (no expensive wine or extra desserts). Under* ***Indemnity Costs****, the loser must pay the entire bill unless they can prove an item was completely unnecessary—it is a much heavier financial "fine" for poor conduct during the trial.*

Legislation:

Settlement Procedures and Cost Sanctions

CPR Part 36 ***(Civil Procedure Rules Part 36)*** *– This regulation governs formal settlement offers and their subsequent effect on legal costs. The judgment references it to contrast the Claimant's informal Calderbank offers with the* ***strict obligations of litigants to make reasonable efforts to settle*** *and respond properly to offers. It is cited to establish that, while the court's discretion on costs is broader than the mechanical rules of Part 36, an* ***unreasonable refusal to accept a settlement offer*** *can—in rare and extreme circumstances—lead to an order for indemnity costs.*

Explanatory CPR Part 36 Note

Analogy for CPR Part 36 and Cost Rules*: Think of* ***CPR Part 36*** *as a formal, high-stakes trade agreement in a marketplace. If one party makes a formal "Part 36" offer and the other refuses but fails to get a better deal at trial, the rules impose a pre-set "fine." In this case, because the offers were informal, the Master used the* ***general principles*** *of those rules like a set of scales, weighing whether the Claimant's offers were realistic enough that the Defendants were "unreasonable" to ignore them. Because the offers were deemed unrealistic, the scales tipped heavily against the Claimant.*

Legal Texts & Commentary:

Principles and Practice of Alternative Dispute Resolution

Jackson ADR Handbook (4th Edition, 2025) *– This commentary is the primary legal text relied upon by the court to evaluate the conduct of the parties regarding mediation. The judgment utilises it*

in two distinct ways:

1. ***Responding to Mediation Requests:*** *The court references* ***paragraphs 11.64 and 11.65*** *(as endorsed in the case of PGF II) to establish the "general rule" that a party must respond to a serious request to mediate. Failure to provide a response, even if valid grounds for refusal exist, is generally viewed by the court as unreasonable conduct.*
2. ***Justifications for Refusal:*** *The judgment further cites* ***paragraphs 11.13 and 11.21*** *to identify specific circumstances where a party is legally justified in declining mediation. This includes situations where a defendant faces a* ***"wholly unfounded" claim*** *and reasonably chooses to contest the matter at trial rather than offer a settlement to "buy the claimant off".*

Explanatory ADR Handbook Note

The ***Jackson ADR Handbook*** *serves as the "Rulebook for the Referee" during the pre-trial phase. While the law (statutes) tells you what is legal, this handbook tells the court what is "fair play." Just as a referee might penalise a player for ignoring a teammate's signal—even if that signal was poorly timed—the handbook suggests that ignoring a mediation request is a "foul" unless you can prove you had a strategically sound reason to keep playing the game your way.*

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Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012