

Neutral Citation Number: [2021] EWHC 1309 (Ch)

Case Number CR-2021-000724

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)
IN THE MATTER OF ASTON MARTIN OWNERS CLUB LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Royal Courts of Justice 7 The Rolls Building Fetter Lane London EC4A 1NL

Date: 7 June 2021

Before:

DEPUTY ICC JUDGE BARNETT

Between:

Mr Richard Furse Claimant

-and-

Mrs Anne Reed
Mr David Lewington
Mr Tom Westley
Mr Matthew Godfrey
Mr Sean O'Connell
Mr Peter Snowdon

Defendants

Guy Adams (instructed by Capital Law Limited) for the Claimant
[**Nicola Rushton QC** was also instructed for the Claimant for the purpose of
making written submissions subsequent to the hearing]
Matthew Bradley (instructed by Clyde & Co LLP) for the Respondents

Hearing date: 11th May 2021

JUDGMENT

DEPUTY ICC JUDGE BARNETT

1. This matter concerns events surrounding the election of directors of Aston Martin Owners Club Limited (the “Company”) at its 2021 Annual General Meeting. At the conclusion of a hearing held on 11 May 2021, I refused to grant the declaratory relief sought by the Claimant. I said that I would give my detailed reasons subsequently. This is my judgment. **Background**
2. The Company is aptly described by the First Defendant as a club to:

“promote the sport and pastime of motoring, develop interest in the Aston Martin car and encourage social interaction between members”.

It is a company limited by guarantee without share capital. It is managed by a Committee of Management (the “CoM”) comprising 20 directors all of whom are unpaid part-time volunteers.
3. The Claimant is a member of the CoM and served as the membership director.
4. The First Defendant, Ms Anne Reed, was, prior to the election referred to below, the chairman of the CoM. The Second to Sixth Defendants were members of the CoM.
5. The Claimant’s evidence records that the Company was incorporated in 1951 and that it has around 7376 members from all over the world with 97 of those members holding official positions (there is a difference of opinion as to the precise number of members but the point is irrelevant for my purposes). The Company employs a small management staff headed by the club manager, Mr Marc Aylott.
6. In preparation for the 2021 elections for membership of the CoM, nominations were to be submitted to Mr Aylott. Ballot papers and proxy forms were sent to all members by email on 24 February 2021 by Mr Aylott requiring all completed ballot papers to be returned at least seven working days before the AGM which was scheduled for 27 March 2021.
7. On 22 March 2021 Mr Aylott, whilst checking returned ballot papers, spotted what he considered to be an unusual pattern of voting. It transpired that the Claimant had accessed the personal details of members and forwarded to the South African Region Representative a pre-populated ballot slip with the intention of encouraging members to vote in a certain way.
8. Mr Aylott reported the position to Ms Reed. Ms Reed, in consultation with Mr Anthony Oade, the Company’s deputy chairman and Mr Aylott determined that they should seek advice from the Company’s GDPR officer and the Company’s legal advisers with a view to then reporting the matter to the CoM.
9. The Company’s GDPR officer consulted with the Information Commissioner’s Office and concluded that there was not a reportable breach as no harm had

been suffered by any member. However, he advised that the disclosure of information without the permission of the data controller could nonetheless render the Claimant susceptible to prosecution as a criminal offence under section 170 of the Data Protection Act 2018.

10. The Company's legal advisers, DWF LLP, provided initial advice on 24 March 2021 concluding:

"The Company sent out blank voting forms to all members so the Company has followed the correct procedure. If a member subsequently chooses to put their name and membership number on an already Completed form and sent it on that, to me, is an indication that they, in their capacity as a member, agree and wish to vote in that way. If they don't wish to vote in the suggested way they could abstain or change the form or vote differently. It isn't ideal at all and as I said in my initial email, it is not a black and white answer, but I just don't think you can ignore or void votes of members when they have actively chosen to vote in a particular way. I think you will have to accept these votes and proceed with the elections at the AGM".

11. The following day Ms Reed sent a further email to DWF recording that several directors were concerned at the position and asking whether the CoM had the right to suspend the announcement of the voting results whilst an investigation was carried out. DWF replied:

"If the voting hadn't been carried out as prescribed by Article 5.7 then you wouldn't have any votes to announce so, in theory, yes.

However, I must stress that my view remains that by applying their details and sending the forms themselves, members have voted in line with their own wishes and it would not be correct for the directors to take any act to try to undermine, void or discard those votes, despite the fact they may be undesirable. I, personally, can't advise otherwise and from the facts you have given me I can't recommend delaying/suspending/cancelling the announcement of the votes".

12. An emergency meeting of the CoM was held on 26 March 2021, the day before the AGM. A transcript of that meeting is in evidence. The Claimant was present. He accepted that he had been wrong in providing a pre-populated ballot paper to the South African Region Representative.

13. The Claimant's actions were criticised by Mr Oade who concluded that the process had been tainted and he duly withdrew his nomination for chairman. The minutes record:

"I am sorry Richard, I think the way you did it is not in the correct way of canvassing that we have done and I'm sorry to say that I'm going to withdraw my nomination for chairman. It is not consistent with my values and behaviours, what has happened here and I feel that any victory would have been tainted, irrespective of whether legal or not. The fact that we are

discussing it in this manner means it is tainted, in my view. And it would completely ruin the experience of being chairman”.

14. Ms Reed reported the advice that she had been given by DWF in the first of their emails and advised:

“So although it is not illegal and the result must stand. I think it is then a question of what is morally acceptable but we do basically have to ahead with the results tomorrow [sic]”.

15. The CoM then considered whether it was appropriate to delay reporting the election results at the AGM pending an investigation. Ms Reed did not share explicitly with the CoM the second email from DWF referred to above. Her failure to do so is heavily criticised by the Claimant but she did record her views as follows:

“The suggestion has been that we don’t give the results out tomorrow and we investigate it, but actually, there is really nothing else to investigate. Members have the choice to make a decision. They had a blank ballot form, they had a completed ballot form, they chose what to do.

In terms of the election I don’t think we have any choices. Unless anyone has any other options that they want to suggest in terms of what we do in terms of results I think we have to accept that we give the results as it is.

It sounds like we don’t have any other options for tomorrow, so I think we have to continue with the results as they are.

In answer to the question of what we do tomorrow, I don’t see we have any choice but to go with the results other than the fact that Anthony has stood down so that would mean that I would be chairman, we don’t know who has got the treasurer bit and we don’t know the directors we obviously know that Tom and Matt are at a disadvantage. So unless anyone has another option on what we do tomorrow I don’t think there is any more discussion on this that is where it is”.

16. Mr Lewington summarised his view of the meeting in his witness statement:

“6. The legal advice from the Company’s lawyers which Anne Reed read out at the meeting stated that they did not consider the votes to have been illegal, and that they should stand and the AGM proceed. However, there was concern expressed by Mr Overdijk, our Dutch Section Chairman and Director, about the validity of some of their opinions which had been sought in a hurry. I value the opinion of Mr Overdijk, who is a lawyer himself, and agreed with my co-Directors that adjourning the AGM prior to announcing the election result to allow time for additional investigation and for the legal advice to be confirmed and thereafter followed would be a sensible step in the circumstances. I made this decision, not from a desire to alter the outcome of the election, but on the basis of what I thought was in the best interests of the

Club and the Members. I was particularly concerned that many members would be upset that their own votes would have been undermined by the actions of the Claimant. If we had been allowed to meet earlier in the week to discuss this with more time before the AGM we might have reached a different decision for the actual AGM. Along with all I believe of the coDefendants to this claim, I have always intended that once the additional advice was to hand the COM would implement it. As Anne Reed says in her statement that is exactly what has happened”.

17. Notwithstanding Ms Reed’s advice, a consensus was ultimately reached by all those present, including the Claimant, that the AGM should be adjourned and that all of those who stood as candidates should withdraw their nominations so that a new election could take place.

18. The AGM took place the following day, 27 March 2021. It was attended by 66 household members. The Claimant was also present. Mr Aylott read out a statement that had been prepared at the meeting the previous day recording that all CoM members and new nominees had withdrawn their nominations, that there was a need to investigate the consequences of the withdrawal and that it was proposed to adjourn the meeting with a re-run of the election at some point in the future.

19. 57 out of the 66 household members voted in favour of the adjournment. Mr Adams, counsel for the Claimant, was unable to tell me whether the Claimant had voted in favour of adjournment but, given his participation in the formulation of the strategy the previous day, it is reasonable to assume that he did.

20. Notwithstanding the outward signs of accord, the Claimant’s position changed. Five days after the AGM, on 1 April 2021, Capital Law Limited, a law firm instructed by the Claimant and two other CoM members wrote to Ms Reed complaining of her conduct in connection with the election. The letter records:

“You have sought to influence the 2021 CoM election. Your acts and omissions have created uncertainty, have not been in the best interests of the Company, have been ultra vires your powers, and have left the Company in a governance crisis which could and should have been avoided had you properly discharged your duties as chairman...

You failed to disclose the full content of the legal advice that you had received before or during the meeting. It was only belatedly disclosed on 28 March 2021, after both the CoM meeting and the Annual General Meeting and because Mr Furse demanded that you do so. The advice, if disclosed in full could, and most likely would, have had a material impact on the discussions at the meetings and the conclusions reached. You had no right to withhold the advice, nor selectively to disclose it.

The election result should have been announced at the annual general meeting on 27 March 2021. You ignored that advice, which has precipitated confusion and uncertainty.

You continue to conceal the results without cause or justification or indeed any authority to do so. You have wilfully failed to recognise and/or properly announce the winning candidates, notwithstanding that the election count has been completed, and the result is known to Mark Aylott – albeit he is not an independent scrutineer”.

21. The same day, the Company’s monthly CoM meeting took place. The minutes to that meeting record that advice should be sought from the Company’s lawyers as to the legal status of the current CoM and that nothing further should be done pending receipt of that advice. Although not present at the meeting, the Claimant appears to have accessed a recording of it shortly thereafter so was aware of the proposed strategy.
22. On 14 April 2021 Clyde & Co, a law firm then only acting for Ms Reed responded to the letter from Capital Law. They recorded that their interpretation of the articles was that the existing CoM remained in office until the election results were declared. They roundly rejected the criticisms made of Ms Reed:

“The decision to propose to the AGM that the meeting be adjourned prior to the completion of the election was one taken by the executive committee as a whole. Mr Oade was the first committee member to withdraw his candidature for chairman after a committee discussion about pre-completed ballot forms which had been sent out to members. During the committee meeting and before the subsequent withdrawals on the part of other committee members our client read out to those present the legal advice which had been received. She made the point to the meeting that in her view based on the legal advice the result should stand.

It is simply not the case, as you assert, that our client sought to influence the executive committee or withhold legal advice. In fact, the view which our client expressed at the meeting ran contrary to the decision which was reached by the committee. The assertions which you make in your letter that our client sought to conceal the results (although for the avoidance of doubt she was and remains unaware as to how the votes were cast) is quite simply not sustainable. The steps which were taken came about as a result of an executive committee decision which was made in full knowledge of the legal advice which had been obtained. For our client to have acted other than in accordance with the decision of the executive committee (which it appears to be suggested in your letter that she should have done) would have been quite improper.

The way forward

We do agree with you that the events which have transpired give rise to uncertainties both as to the composition of the executive committee once the

AGM has been reconvened and the correct way forward in terms of implementing decisions which have already been made as endorsed at the recent AGM. It seems to us that it is in everybody's interest (including that of your clients) that the Company's solicitors (neither you nor we) should be instructed to advise as to the current position and as to such steps as should be taken to resolve the anomalies to which the events have given rise...".

23. Further advice was duly obtained from DWF on 15 April 2021. The advice was copied to the Claimant. It confirmed that the election results were valid and should be announced at the adjourned AGM and that the existing CoM remained in situ until the election results were announced.
24. The Claimant's concerns were not allayed and his animus towards Ms Reed, in particular, continued. I was directed by Mr Bradley to various postings of the Claimant on the Company's internet members forum message board. I am told that there at least 13 such postings but, for brevity, I record just two postings from 14 April 2021. They are indicative of the tone of the postings:

"The issues that have been identified by me alone are considerable. There may be more. In my opinion, many fall squarely to the ex-chairman who would appear to have believed she could run the club as her personal fiefdom. She certainly appears to have considered the CoM as being there to endorse her actions although she didn't even do that on a number of occasions.

The matter will now heat up significantly (in legal terms) and the bills will also now start to be personal and paid by the losers.

We trust that Anne and David and the others in their group have the pockets needed to pay because we will pursue the matter to conclusion". **The**

Commencement of Proceedings

25. A Part 8 claim was issued on 21 April 2021 seeking orders and declarations as to the results of the election, an injunction to restrain the Respondents and/or the Company from causing or encouraging the publication of any statements which (a) purport to be made by or on behalf of or with the encouragement of the Company or in any official capacity in any publication of the Company or on the Company's website or otherwise with the members of the Company and (b) relate in any way to the Election, the current membership of the Executive Committee or the future election of members of the Executive Committee, and insofar as necessary, the appointment of receivers and managers of the Company pending the determination of the Part 8 claim.
26. At the request of the Claimant's solicitors the matter came before me two days later in the interim applications list. The Claimant sought interim injunctive relief and, if necessary, the appointment of managers to the Company pending the determination of the proceedings.
27. The claimant justified the need for urgency in his first witness statement as follows:

“5. The matter is urgent (a) because the current situation is wholly untenable and (b) because I am concerned that Anne Reed, who was the retiring Chairman of the Company, has been making statements to the members calling into question the Election and may be taking steps, with the assistance of David Lewington, who was the retiring Director responsible for publications, to attempt to cause statements to be made relating to the Election, that will purport to be official statements on behalf of the Company or at least made with its encouragement or endorsement. In particular, I am anxious that no such statements should be included in the membership magazine, which is about to be printed in readiness for distribution at the end of the month”.

He continued:

“67. Most pressingly, there is a Club magazine (AM News) that is mailed to the Members each month and I am very anxious that no statement is made in the magazine, on the website or elsewhere purporting to be some sort of official statement either made on behalf of the Company or by purported officers of the Company relating to the elections. This would have the serious potential to cause further dissent among the members which will only be damaging to the company as a whole...”

28. At that point, only Ms Reed had been served with the proceedings although the other Defendants were aware of them.
29. I was not persuaded, on the evidence before me, that there was a need for interim relief. However, I gave directions for evidence and for the application for interim relief to be restored back to me. It was subsequently listed for a substantive hearing on 11 May 2021.
30. Prior to the restored hearing, a further meeting of the existing CoM was held on 26 April 2021 which resolved to reconvene the AGM for 6 May 2021 for the purpose of declaring the election results.
31. The reconvened AGM was duly held on 6 May 2021 and the election results were announced. I should record that the Claimant does not accept the status of the existing CoM or their power to reconvene the AGM. However, he does accept that the election results have now been disclosed and the successful candidates have been identified and taken office.
32. Therefore, by the time the matter came back before me on 11 May 2021, the Part 8 claim was redundant subject only to the issue of whether I should grant declaratory relief which I address below. However, I should make three observations.
33. First, the Claimant purports to bring proceedings both on his own behalf and on behalf of all other members of the company pursuant to CPR 19.6 (1). That rule provides:

“19.6 (1) where more than one person has the same interest in a claim –

(a) the claim may be begun...

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest”.

In support of that entitlement, Mr Adams referred me to the decision in Catesby v Burnett [1916] 2 Ch 325.

34. Mr Bradley submitted that *Catesby v Burnett* did not support the Claimant’s argument. He submitted that this was not a case where the Claimant could show a common interest or grievance. Indeed, he further submitted, the voting majorities, both at the AGM on 27 March 2021 and the subsequent CoM meeting on 1 April 2021, showed clearly that most members would not want the claim prosecuted in their name. Mr Bradley submitted that the claim was being pursued to pursue the interests of the Claimant alone.
35. I agree with Mr Bradley. I do not consider that this claim can properly be said to be brought on behalf of a class that share the same interest or grievance as the Claimant. It is clear from the voting that the overwhelming majority of the members attending the AGM were content with the proposition that the AGM should be adjourned and that the views subsequently expressed by the Claimant were in the minority.
36. Secondly, I consider the challenge to Ms Reed’s character to have been wholly unwarranted. The Claimant has sought to portray her as an individual seeking to cling on to power. Both her competence and integrity have been challenged. The evidence before me does not support those claims.
37. Ms Reed was faced with a situation wholly outside her experience. Sensibly, she consulted, first, with the deputy chairman and with the Company’s legal advisers with a view to reporting to the CoM. She reported faithfully to the CoM the advice that she had received.
38. The suggestion that the outcome of the meeting on 26 March 2021 would have been different if she had reported the legal advice verbatim does not stand up to scrutiny. It is clear from the extracts of the minutes referred to above that Ms Reed reported consistently and clearly that the AGM and the declaration of results should proceed. The documents record that it was the other members of the CoM who were concerned as to the Claimant’s conduct and sought an investigation.
39. Thirdly, I noted above that the application for interim relief was said to have been prompted, in large part, by the Claimant’s fear that the Defendants were intending to publish a commentary on the election and that this would undermine members’ confidence in the Company. That concern was exaggerated as the Claimant had been told that there was no intention to refer to the election in the Company’s magazine. Moreover, the Claimant’s expressed fear of publicity of the issue is impossible to reconcile with his own

postings on the Company's internet forum which were likely to promote the discord which he said he feared.

The Application for Declaratory Relief

40. Mr Adams invited me, for the avoidance of doubt, to make a declaration as to the identity of the new CoM but to provide for the order to remain on file for 28 days to allow for any dissenting members to identify themselves. Mr Adams also urged upon me that I should resolve whether the new CoM took office as at 27 March 2021 or 6 May 2021.
41. Mr Adams did not identify any actual controversy between the parties before me which required me to resolve the issue. However, he submitted that there was the potential for the issue to become significant and that I should resolve it one way or the other now.
42. Mr Bradley submitted that there was no dispute between any of the parties as to the identity of the current CoM nor was there any suggestion of any other member seeking to argue a contrary view. He further submitted that there was no identifiable need for me to resolve the issue of whether the existing CoM were appointed on 27 March 2021 or 6 May 2021. He submitted that I would be wrong to exercise my discretion to grant declaratory relief absent some compelling reason to do so.
43. Mr Bradley referred me to Office Depot International (UK) Ltd v UBS Asset Management (UK) Ltd and others [2018] EWHC 1494 in which O'Farrell J identified the applicable legal principles as summarised by Lord Woolf CJ in Governor and Company of the Bank of Scotland v A Limited [2001] EWCA Civ 52:
- “46... The fact that the courts now have these powers, must not, however, be regarded as a substitute for financial institutions taking the decisions which should be their commercial responsibility. The court's powers are discretionary and only to be used where there is a real dilemma which requires their intervention.
47. Declaratory relief will be granted only where there is a real dispute between the parties: Gouriet v Union of Post Office Workers [1978] AC 435
- ... So for the court to have jurisdiction to declare any legal right it must be one which is claimed by one of the parties as enforceable against an adverse party to the litigation, either as a subsisting right or as one which may come into existence in the future conditionally on the happening of an event...
- ... The jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else”.

44. I consider Mr Bradley to be correct. Absent any identifiable dispute between the parties as to the identity of the members of the existing CoM, I have concluded that I should not grant declaratory relief and the claim for a declaration is refused. As to the subsidiary claim for a declaration as to the date the existing CoM members took office, I have similarly concluded that, absent any dispute, I should not succumb to the temptation of declaring the law generally or giving an advisory opinion.

Costs

45. Contemporaneous with the circulation of the above judgment in draft, I invited written submissions on costs. On behalf of the Claimant, I received a submission from Ms Nicola Rushton QC who had been instructed by the Claimant subsequent to the substantive hearing. I also received a submission from Mr Bradley on behalf of the Defendants.
46. On behalf of the Claimant, Ms Rushton submitted that the Claimant was the successful party as the primary purpose in issuing the claim had been achieved in that the results of the election were announced on 6 May 2021. She submitted that, had it not been for the issue of the proceedings on 21 April 2021, it is not credible or realistic to conclude that the results would have been declared. Accordingly, she submitted, the Claimant should be entitled to all or part of his costs.
47. On behalf of the Defendants, Mr Bradley submitted that the Defendants were the successful party. He submitted that the proceedings were misconceived and unnecessary. He seeks payment of the Defendants costs on an indemnity basis.
48. In my judgment, the Defendants were the successful party for the following reasons:
1. The proceedings were not causative of the results being declared. It is clear from the minutes of the CoM meeting held on 1 April 2021 that the CoM had already agreed on an approach, namely, that the CoM should seek further legal advice and should not take any further steps until that advice was received. Implicit in that decision was that the CoM would follow that advice once received. That decision was known to the Claimant. Moreover, that advice had been followed up by Clyde & Co writing to the Claimant's solicitors on 14 April 2021 urging the Claimant to wait until the advice had been received and considered. That proposed course would have led to the results being declared whether or not the claim had been issued. In my judgment, the proceedings were both unnecessary and served only to increase the costs of the parties.
 2. The claim was also bound to fail. For the reasons given above, I do not consider that the Claimant could properly be said to be representative of both himself and all other members of the Company pursuant to CPR 19.6

- (1). The Company was not a party to the claim nor had the Claimant sought to join as defendants all members of the CoM. Accordingly, the Court would not have been in a position to make the order sought by the Claimant.
3. The application for urgent interim relief was wholly misconceived. The evidence before me at the first hearing on 23 April 2021 was unpersuasive. The further evidence that emerged only served to reinforce my initial concerns. As noted above, there was a clear conflict between the Claimant's alleged concern as to the uncertainties surrounding the election being made public and his own postings on the Company's internet forum.
4. I also have regard to the conduct of the Claimant. It was the Claimant's conduct – deprecated by other CoM members and accepted by him to have been wrong – which was the cause of the uncertainty and prompted the dispute. The Claimant joined with the other CoM members, at the meeting on 26 March 2021, in deciding to adjourn the AGM and, it would appear, voted at the AGM accordingly. Days later, the Claimant sought to impugn the very decision that he had voted for. Finally, the Claimant launched an attack on Ms Reed's competence and integrity which, as I said above, is not supported by the evidence. Had I been persuaded, as a matter of technicality, that the Claimant was the successful party I would have concluded that the above conduct was sufficient to displace the burden that the unsuccessful party should pay the costs of the successful party.
49. In the circumstances, the Claimant should pay the costs of the Defendants.

The basis of assessment

50. The court will only order indemnity costs if there is some conduct or circumstance which takes the case out of the norm – see Excelsior Commercial and Industrial Holdings Ltd [2002] EWCA Civ 87.
51. Mr Bradley referred me to two further authorities pertinent to the application of the principle. First, in Three Rivers DC v Bank of England [2006] EWHC 816 (Comm), Tomlinson J provided a summary of the factors to be taken into account:

“(8) The following circumstances take a case out of the norm and justify an order for indemnity costs, particularly when taken in combination with the fact that a claimant has discontinued only at a very late stage in proceedings:

- (a) where the claimant advances and aggressively pursues serious and wide ranging allegations of dishonesty or impropriety over an extended period of time;

- (b) where the claimant advances and aggressively pursues such allegations, despite the lack of any foundation in the documentary evidence for those allegations, and maintains the allegations, without apology, to the bitter end;
- (c) where the claimant actively seeks to court publicity for its serious allegations both before and during the trial in the international, national and local media;
- (d) where the claimant, by its conduct, turns a case into an unprecedented factual enquiry by the pursuit of an unjustified case;
- (f) where the claimant pursues a claim which is irreconcilable with the contemporaneous documents;
- (g) where a claimant commences and pursues large-scale and expensive litigation in circumstances calculated to exert commercial pressure on a defendant, and during the course of the trial of the action, the claimant resorts to advancing a constantly changing case in order to justify the allegations which it has made, only then to suffer a resounding defeat.”

52. Secondly, Mr Bradley referred me to Lejonvarn v Burgess and another [2020] EWCA Civ 114 where Coulson LJ commented:

“An irrational desire for punishment unlinked to the merits of the claims themselves is precisely the sort of conduct which the court is likely to conclude is out of the norm.”

53. In my view the conduct of these proceedings has fallen outside of the norm for the following reasons:

1. For the reasons given above, I consider that the proceedings were misconceived from the outset. Moreover, the decision to commence proceedings notwithstanding the explanations given in the Clyde & Co in their letter of 14 April 2021, was unreasonable and unnecessary.
2. I have particularly taken into account the fact that the strategy which the Claimant has sought to impugn had been approved by him as a member of the CoM.
3. As noted previously, the proceedings appear to have been targeted at a specific group of CoM members rather than the Company or the CoM as a whole. No explanation has been given as to why that is so. Viewed through the prism of the Claimant’s postings on the Company’s internet forum – in particular his expressed relish that costs would be incurred by the Defendants – I am driven to the conclusion that, at least in part, the Claimant’s actions were motivated by a desire to punish the Defendants.
4. As noted above, I consider the attacks made on Ms Reed’s integrity and competence to have been unwarranted and unsupported on the evidence. I also

have regard to the fact that those attacks were ventilated publicly on the Company's internet forum.

5. The Claimant's evidence in support of urgent interim relief was, at best, exaggerated and disingenuous.

54. In the circumstances, I am satisfied that it is appropriate to order that the Claimant pay the Defendants costs on an indemnity basis. Having regard to the Defendants costs schedule (and noting that the costs claimed are less than 50% of the costs claimed on the Claimant's costs schedule), I assess those costs at £44,035.92 inclusive of VAT, such costs to be paid within 14 days. I ask counsel to agree and submit a draft order

DEPUTY ICC JUDGE BARNETT