

Neutral Citation Number: [2021] EWHC 3161 (Ch)

Case No: D30MA278
Petition No. 2874 of 2017

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (Ch D)

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ
Date: 25 November 2021

Before:

HIS HONOUR JUDGE STEPHEN DAVIES
SITTING AS A JUDGE OF THE HIGH COURT

Between:

TARIQ MAHMOOD MALIK **Claimant/Petitioner**

- and -

- (1) **MAHBOOB HUSSAIN JUNIOR**
(2) **RN RESTAURANT**
(3) **(STOCKPORT) LIMITED**
(4) **NUSRAT TARIQ**
(5) **MIRZA BEGUM**
(6) **ASAD ALI MALIK** **Defendants/Respondents**
USMAN HUSSAIN MALIK

James Mather and Mark Wraith
(instructed by **Viceroy Law Solicitors, Manchester M13 0NG**) for the **Claimant**
Lesley Anderson QC and Tina Ranales-Cotos
(instructed by **Clarion Solicitors, Leeds LS1 2 TW**) for the **First to Fifth Respondents**
The Sixth Defendant was neither present nor represented

Hearing date: 10 November 2021
Supplemental written submissions dated 15 November 2021

APPROVED JUDGMENT ON COSTS

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII. The date and time for hand-down is deemed to be 10 a.m. on 25 November 2021.

I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

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A. [Introduction and decision](#)

1. This judgment addresses the question of costs. It is the last judgment (at least at first instance) in relation to the issues in dispute between the claimant (“**Tariq**”) and the defendants, principally the first defendant (“**Mahboob**”), arising out of Tariq’s claim for the dissolution, winding-up and taking of the final account in relation to the partnership which he contended had existed between them as regards the Stockport Road Nawaab, an Indian restaurant business based in Levenshulme, Manchester.
2. In my first judgment, available on Bailii under neutral citation [2020] EWHC 2334 (Ch), I held that Tariq succeeded in his primary case that there was a partnership between himself and Mahboob, which included both the Stockport Road property which was leased to the restaurant business and the Stockport Road company which ran the restaurant business, on the basis that the two men held the Stockport Road property in partnership and the shares in the Stockport Road company as assets of the partnership. However, I also held that as from 2009 Tariq and Mahboob effectively divested themselves of 50% of the shareholding in the Stockport Road company to their respective wives, so that they held 50 of the 100 issued shares on trust for the partnership and Nusrat and Mirza held 25 each of the remainder for themselves absolutely. I also held that Tariq’s claims and complaints in relation to a second restaurant in Perivale, London, run by the families through a separate company, were not made out.
3. I was also satisfied that the relationship between Tariq and Mahboob had wholly broken down and that it was just and equitable to make an order for the dissolution of the partnership and for the partnership to be wound up and for a final account to be taken. Finally, and separately, I held that the unfair prejudice petition brought by Tariq against the defendants in relation to the Stockport Road company failed. Costs were reserved.
4. In my second judgment, available on Bailii under neutral citation [2021] EWHC 1405 (Ch), I addressed the outstanding issues in relation to the final account. The primary issue which I had to resolve was what order should be made in respect of the partnership assets and, in particular, whether, as Tariq contended, they should be sold to the highest bidder, with both partners and

third parties being permitted to bid for them, or whether, as Mahboob contended, Tariq's interest should be compulsorily sold to Mahboob at a valuation to be determined by the court. I also had to determine the true value of the partnership assets in order to arrive at the court determined valuation, which was relevant both to Mahboob's case but also to Tariq's case that the court determined valuation should stand as a reserve price for the bidding process. The principal area of dispute was the valuation of the shareholding in the Stockport Road company, although during the course of the trial it became apparent that there was an issue as to the proper approach to the valuation of the Stockport Road property, which had been determined by a single joint valuer. Happily, the parties had been able to agree the disputed issues in relation to the directors' loan accounts and the net indebtedness as between the Stockport Road company and the Perivale company which had featured in the earlier litigation.

5. In summary, I concluded that there should be a sale through a bidding process on terms, but if no sale proceeded as a result of that process Mahboob should be entitled to buy out Tariq's share at the court determined valuation. Costs were again reserved.
6. Following my judgment the parties were able to agree an order which provided for them to agree a sale mechanism for the bidding process, to be conducted through an independent sale conductor. That bidding process duly took place. As Mahboob had anticipated, Tariq made by far the highest bid, but then failed to pay the required deposit by the specified time so that his bid became invalid. The second highest bid came from the Sixth Defendant, Usman, who - it appeared to me - had changed allegiance from being one of the other individual defendants who had supported Mahboob at the original trial to acting in concert with Tariq by the time of the second trial, although he contended that he was acting on his own account. Usman paid his deposit, but did not complete by the required date. Tariq made an application seeking declaratory relief, which would have allowed Usman extra time to complete and which Usman supported but which Mahboob opposed. In my third judgment I held that Usman was not entitled to extra time to complete, with the result that his bid also became invalid and he forfeited his deposit. (It is a curious feature of this case that, although Mahboob was willing to release the deposit back to Usman, Tariq was not, for reasons which have never been explained, and Usman has not made any separate application to be repaid his deposit.) I made an adverse costs order against Tariq and Usman on a joint and several basis and summarily assessed those costs. Tariq has recently obtained permission from the Court of Appeal to appeal the substantive judgment.
7. Finally, Mahboob, having paid the deposit and balance and being ready, willing and able to complete, made an application to compel Tariq to convey his share in the Stockport Road property and his share of the partnership shareholding in the Stockport Road company to him ("**the enforcement application**"). At a late stage Tariq consented to the enforcement application, leaving the costs of the application outstanding.
8. Thus, there are three sets of costs to be determined by this judgment, viz the costs reserved after the first trial, the costs reserved after the second trial and the costs of the enforcement application.

9. For ease of reference I repeat here the version of the summary of the principal individuals and companies involved in the dispute which, suitably updated from the first judgment, appeared in my second judgment.

Name	Description
Tariq Mahmood Malik (“Tariq”)	The Claimant. Father of Asad and Usman. Husband of Nusrat. Formed a partnership with Mahboob in 2002. Shareholder in the Second Defendant (“the Stockport Road company”) and director of the Stockport Road company between September 2010 and December 2016. Joint owner, with Mahboob, of the property at 1008 Stockport Road (the “Stockport Road property”) from which the restaurant business (the “Stockport Road Nawaab”), which forms the subject of these proceedings, trades.
Mahboob Hussain Junior (“Mahboob”)	The First Defendant. The husband of Mirza, father of Atikah and father-in-law of Asad. Shareholder and director of the Stockport Road company since September 2002. Joint owner, with Tariq, of the Stockport Road property.
RN Restaurant (Stockport) Limited	The Stockport Road company, the Second Defendant / counterclaimant. Incorporated in August 2002 as Nawaab Restaurant (Stockport) Limited and changed its name in June 2017.
Nusrat Tariq (“Nusrat”)	The Third Defendant. Mother of Asad and Usman. Wife of Tariq. Shareholder in the Stockport Road company since 2008.
Mirza Begum (“Mirza”)	The Fourth Defendant. Wife of Mahboob. Shareholder in the Stockport Road company since 2008.
Asad Ali Malik (“Asad”)	The Fifth Defendant. Elder son of Tariq. Married to Atikah, daughter of Mahboob. Shareholder in and director of the Stockport Road company since October 2016.
Usman Hussain Malik (“Usman”)	The Sixth Defendant. Younger son of Tariq. Shareholder and director of the Stockport Road company since October 2016. Did not give a witness statement or participate in the original trial. Was previously represented by the same solicitors as the other defendants but on 7 April 2021 his new solicitors, Buckles LLP, served a notice of change.

10. I also repeat the summary of the essential facts, including my findings in the first and second judgments, which are that in early 2003 Tariq and Mahboob opened a large-scale buffet style restaurant with wedding and banqueting facilities (“the Stockport Road Nawaab”) in what had been a cinema at 1008 Stockport Road in Levenshulme, Manchester (“the Stockport Road property”). They were equal joint owners of the Stockport Road property and equal joint shareholders in the Stockport Road company, through which the restaurant business was undertaken. A few years later, in 2006, they entered into a formal deed of partnership to regulate their business affairs, which replaced the previous informal partnership which I found already existed between them in relation to the Stockport Road property and in relation to the Stockport Road company. Three years after that, in 2009, they each disposed of half of their shares in the Stockport Road company to their respective wives, the third defendant (“Nusrat”) and the fourth defendant (“Mirza”). They also involved the claimant’s two sons, the fifth defendant (“Asad”) and the sixth defendant (“Usman”), in the restaurant business. Asad also married one of the daughters of the first defendant, Atikah.
11. The Stockport Road Nawaab, achieved considerable success and became very profitable, tapping into the demand for large scale buffet style wedding and other banqueting events, particularly in the South Asian communities.
12. However, within a few years of the Stockport Road Nawaab opening the relationship between Tariq and Mahboob had become very poor. Against that backdrop in 2007 Tariq executed a power of attorney in favour of Asad which allowed Mahboob and Asad to run the restaurant business for the benefit of both families without interference from Tariq.
13. In 2016 there was a final and (what appeared at trial to be an irreversible) falling out between Tariq on the one hand and each of the individual defendants on the other, including his wife Nusrat (from whom he was already estranged) and his two sons Asad and Usman (who supported their mother and enjoyed good relations with Mahboob). The immediate result was that Tariq was removed from his position as a director of the Stockport Road company. The end result was this litigation.
14. Having determined the existence of the partnership and the extent of its assets in the first trial I observed in my first judgment that the final account process ought only to require a valuation of the Stockport Road property and of the partnership half share in the Stockport company. I stated that, since the parties had already spent a considerable amount of time and money litigating this dispute, they ought to be able to resolve their differences as regards the accounting process on the assumption that the most sensible way forwards was obviously for some or all of the individual defendants to buy out Tariq’s interest in the partnership assets, failing which it appeared that all that would be needed was provision for: (a) a single joint expert valuation report in relation to the Stockport Road property; (b) supplemental expert accountancy evidence and any necessary further disclosure and witness evidence in relation to the valuation of the 50% partnership interest in the Stockport company, on the basis that the only points which required to be addressed were: (i) any issues arising out of the treatment of the inter-company loan accounts and the directors loan accounts; (ii) any issues arising out of the short term, medium

term and long term impact of Covid-19 on the restaurant sector in general and the Stockport Road Nawaab in particular.

15. Given the concerns I raised about the cost and length of the final account exercise, I stated that this further round of evidence should be tightly controlled and strictly proportionate, and I would expect Tariq's advisers, in good time before the procedural hearing to give directions to clearly identify what if any further issues they wished to address.
16. At the procedural hearing which took place in October 2020 the parties agreed with my suggestions and I made an order substantially along the lines I had suggested. No further issues were identified by either of the parties as requiring resolution.
17. Provision was made for the parties to attempt to resolve their remaining differences by ADR, but a mediation proved unsuccessful.
18. It was only in his witness statement made in January 2021 that Tariq identified for the first time in open communication that he did not wish to sell his share of the partnership assets to Mahboob or to the other defendants and that he would prefer to have the Stockport Road property sold on the open market. In my second judgment after the second trial I acceded to this argument, notwithstanding the volte face, on the basis of my analysis of the authorities and my finding that I could not be completely confident that an enforced sale by Tariq to Mahboob at the court determined valuation would realise a fair valuation of Tariq's interest in comparison with what he might receive from a bidding process. However, because I was concerned that by this stage Usman was already probably acting in concert with Tariq and that they would engage in bidding processes purely to drive up the price which Mahboob would have to pay, I included provision for Mahboob to be able to buy at the court determined valuation rather than his higher bid if the eventual higher bidder or bidders failed to complete, leaving him the highest remaining bidder.
19. As I have said, in the events which subsequently occurred my concerns have been realised. Although the Court of Appeal may overturn my third judgment in relation to Usman's bid it has refused to stay enforcement of my order following on from my third judgment, on the basis that Tariq's only interest in Usman's bid is financial, and that this interest is protected by Mahboob having lodged with Blacks solicitors, who are jointly instructed by Tariq and Mahboob, his 50% share of the difference between Usman's bid and the sale price he has to pay under the court determined valuation. It is for this reason that Mahboob has been able to force Tariq to transfer his partnership share notwithstanding the extant appeal.
20. In short, I am satisfied that the appropriate order as to the costs of the proceedings as between Tariq and the defendants¹ save as already determined by adverse costs order, and thus including the first and second trials, but excluding the costs determined by my order following on from the third judgment, and excluding the costs of the enforcement application, is that there should be

¹ As I have said, Usman occupies a rather unusual position but, given my overall conclusion in relation to costs, there is no need to address his position separately, since no-one has contended for any different order against him which would bite regardless of my order as between the other parties.

no order as to those costs. I am satisfied that Tariq should pay Mahboob his costs of the enforcement application, which will need to be summarily assessed by me on receiving representations in the light of my determination below.

21. As with my previous judgments, my reasons follow under the separate section headings as they appear below.

B. Relevant legal principles

22. It is tempting and probably sufficient to say that the relevant principles appear from CPR Part 44.2 and that the relevant authorities are fully set out in the commentary to that Part in the current edition of Civil Procedure. This is not a case where either party is seeking an order for indemnity costs and there are no relevant Part 36 offers. The key authorities are also summarised in the decision of Waksman J in PCP Capital Partners LLP and another v Barclays Bank [2021] EWHC 1952 (Comm) at [10 - 29]. The concluding part of that review considers the principles relating to dishonest conduct on the part of the successful party. Whilst this is not a case of dishonesty the defendants do point to the fairly damning criticisms I made of Tariq in the course of my first judgment in particular.

23. Mr Mather and Mr Wraith also drew my attention to authority in relation to non-Part 36 admissible settlement offers. In particular: (a) Coward v Phaestos [2014] EWCA Civ 1256 for the principle that the rigid rules applicable to Part 36 offers should not be carried over to non-Part 36 admissible offers; (b) Ghura v Dalal [2015] EWHC 1685 (Ch) for the principle that an offer made subject to contract is not, on strict analysis, an offer capable of acceptance, and thus not an admissible offer, although both it and any subsequent response(s) may nonetheless be relevant to the overall exercise of the discretion. Neither principle is contentious.

C. Who is the successful party?

24. Although Ms Anderson QC and Ms Ranales-Cotos contested this proposition, I am satisfied that it is Tariq who is to be regarded as the successful party, at least as regards the first trial.

25. That is because the core case which Tariq advanced and the core relief which he sought was to establish the existence of a subsisting partnership which should be dissolved and wound up with a final account taken. The defendants by their Defence denied that there had ever been a subsisting partnership [par. 4]², denied that any of the assets of any partnership extended to any of the assets in issue in the case [par. 9.2]³ and denied therefore that Tariq was entitled to the relief claimed. As a result of the first trial Tariq succeeded in establishing his case in relation to his core case and his core relief. As a result of the second trial he also succeeded in obtaining an order for sale of the partnership assets, although it was qualified by the proviso allowing Mahboob to buy at the court determined valuation in defined circumstances.

² In the alternative it was said at par. 4.3 that if there was a partnership it existed only in relation to the rental income received in respect of the Stockport Road property.

³ This was the primary case. Other alternative cases were also pleaded in par. 9.3 and 9.4.

26. Although Ms Anderson QC submitted that in reality the issues raised in the Defence as summarised above were not seriously disputed, in my judgment that is simply not the case. The defendants' case was maintained and addressed in their witness statements, in written opening submissions, in cross-examination of Tariq and in closing submissions. No concession was made in any open correspondence. Tariq had to come to court to obtain this core relief and succeeded in doing so. This is not a case, contrary to Ms Anderson QC's submission, where the existence of a partnership is admitted as is the entitlement to a dissolution and a winding up so that obtaining such relief cannot be regarded in itself as success.
27. Moreover, as Mr Mather submitted, these were not simply empty defences which, even if not formally conceded, were as good as conceded. As he reminded me, I had to devote a good proportion of my first judgment to addressing whether or not there was an oral partnership from the start (and found that there was) and whether or not the subsequent written partnership agreement constituted a valid and effective partnership (and found that it did). I also had to decide whether or not the partnership survived the transfer of half of the shares in the Stockport Road company to Nusrat and Mirza (and found that it did) and whether or not Tariq was entitled to a dissolution and a winding up (and found that he was).
28. That means that Tariq is the successful party and, as the cases recognise, that is a factor to which significant weight should be attached and is the starting point from which the courts should not too readily or too extensively depart without good reason.

D. Relative success and failure and conduct

29. It is convenient in this, as is many, cases to address relative success and failure and conduct at the same time, because the reasonableness and manner of pursuit of particular allegations and issues is closely tied up with the analysis of relative success and failure. Whilst there is no hard and fast rule either way, if the successful party has lost on a particular issue, that is likely to be relevant when deciding whether or not there should be a proportionate discount from the costs which he would otherwise recover. If he has lost on a particular issue which he pursued unreasonably or in an unreasonable manner, that is likely to be relevant when deciding whether or not there should be a further proportionate discount to reflect the costs incurred by the other party in relation to that particular issue. (I have jumped straight to proportionate discount because counsel have all proceeded, rightly in my judgment, on the basis that it is both practicable and far more sensible for me to make a proportionate costs order than an issue-based costs order.)
30. Mahboob is able to make a number of good points about Tariq's loss on a number of significant issues, significant both in terms of the time and money incurred both at the trials and before and in terms of the relative value in money terms of those issues. Thus, he pursued and lost: (a) the claim that the partnership owned 100%, rather than 50%, of the Stockport Road company; (b) perhaps most significantly of all in money terms, the claim that the partnership owned 100% of the company which ran the Perivale Nawaab restaurant and/or that Mahboob was in breach of the partnership agreement in setting up the separate company to run the Perivale Nawab restaurant. Had Tariq succeeded in relation to both these hotly contested claims there can be no

doubt that the outcome in financial terms would have been very significantly higher than has been the case. He also pursued and lost claims in relation to the partnership being the owner of the Dubai property and various monetary assets and in relation to his complaints of exclusion and non-payment of dividends. Finally, he failed in relation to the associated unfair prejudice petition, although as Mr Mather submits that petition was always advanced as a fallback to the partnership claim. Further, on the other side of the scale Mr Mather points to the second defendant's failure to prove its counterclaim.

31. I am inclined to accept the submission of Mr Mather that in very broad terms the time taken in the first judgment to address the points on which Tariq succeeded was not dissimilar to the time taken to address the points on which he failed. I am also inclined to accept the submission, and in any event I find, that in this case there is a reasonable correlation between the time taken in the judgment and the time taken at trial and also the time and cost both of the trials and the pre-trial steps.
32. However, the question of conduct in the wider sense also arises. Whilst I did not find that Tariq had advanced dishonest claims or that he was a dishonest witness, my assessment of him as a witness of truth was withering and I found that he had advanced some of his claims in a thoroughly opportunistic way. In fairness, I was not particularly impressed by any of the factual witnesses, Mahboob included, but my negative assessment of Tariq as a witness was of a wholly different and less favourable order.
33. In my judgment the same broad analysis holds true in relation to the second trial and the second judgment. Tariq succeeded in obtaining an order for a sale by bids, but only on the basis that I was only narrowly persuaded that I could not be sure this might not result in a higher value being realised than under the court determined valuation, and subject to Mahboob being allowed to acquire Tariq's share at the court determined valuation in the event that any higher bids by Tariq or Usman or any other bidder did not proceed to completion. As events proved, Tariq did indeed make an unrealistically high bid which he was unable or unwilling to make good even by payment of the deposit, thus amply justifying my conclusion that his only interest was in driving up the price. Whilst Usman did at least make a reasonable bid and paid the deposit, he did not complete within the prescribed time and, I found in my third judgment, thus became disqualified. Even if the Court of Appeal was to overturn that decision and decide that Usman should have been allowed further time to complete, on any view what is apparent from my third judgment is that when he was faced with the choice between agreeing to the proposed terms to get the deal over the line in time or seeking to renegotiate the SPA he chose, without offering any good explanation, the latter course.
34. Mr Mather is right to observe that the court determined valuation was very similar to, and in some respects more favourable to Tariq than, his own assessments and his admissible offers. Mr Mather is also right to observe that during the course of the evidence exercise leading up to the second trial Mahboob effectively conceded his case as regards the director's loan account and inter-company account. However, these factors must be set against the late and opportunistic volte-face which Tariq executed in seeking an order for sale as opposed to agreeing, as he had

previously not disputed should happen, that he should be bought out by Mahboob. Furthermore, the way in which the eventual valuation emerged was in large part only as a result of points raised for the first time at the hearing itself, as will be apparent from a reading of my second judgment. Mr Mather submits that Tariq will still recover more than the court determined valuation, because he will be entitled to receive half the deposit forfeit by Usman and - if he succeeds in the Court of Appeal - half of the difference between the court determined valuation and the Usman bid. However, it may fairly be said that obtaining 50% of the deposit is entirely adventitious as between Tariq and Mahboob. Moreover, especially given my previous findings in my second judgment as to the previous complicity between Tariq and Usman, it would be unsafe for me to proceed on the assumption that this actually represents anything more than an artificial exercise in which Tariq obtains an additional amount from Mahboob due to his having - directly or through associates - advanced monies to Usman to enable him to make the bid which he did, purely to drive up the price and in an attempt to ensure that Mahboob did not obtain the whole of the restaurant business.

35. In conclusion, it is apparent that if one has regard to relative success and failure and also to relevant conduct it is readily apparent that this is a case where there must be a significant departure from the starting point that the successful party should recover all of his costs, but the question is to what extent. Before I can answer that I must refer to the admissible offers.

E. Admissible offers

36. This is a case where neither party made a Part 36 offer or another admissible offer which, it can clearly be said, it bettered through continuing with the litigation through to the end.
37. However, in my judgment the offer of most relevance is that made by Mahboob to Tariq on 18 May 2018, after proceedings had been issued and after the first interlocutory skirmishes, but before the first effective CCMC. In short, Mahboob offered without prejudice save as to costs and subject to contract to pay Tariq £1M for his shareholding in the Stockport Road company and to acquire his half share in the Stockport Road property at half the average of three independent valuations. This was inclusive of interest and costs and also brought to an end all other claims and counterclaims in the case. It was well judged in that it recognised, consistently with the eventual outcome of the litigation, that Tariq's only interest was as to 25% of the Stockport Road company and 50% of the Stockport Road company and that the sensible outcome, given the complete breakdown in the relationship between himself on the one hand and everyone else on the other, was for him to be bought out. It thus illustrates that notwithstanding Mahboob and the other defendants' open and maintained stance in the litigation, for the purposes of settlement Mahboob was prepared to accept what was - as I found - the reality of the position.
38. At the costs hearing and in subsequent submissions there was some considerable debate about whether it could be concluded that Mahboob had done better than this offer as a result of the eventual outcome. It can reasonably confidently be concluded that, even allowing for costs incurred to that point, Tariq obtained less than the offer solely on the court determined valuation of the Stockport Road company. However, as Mr Mather says, the court determined valuation reflected, at least to some extent, the impact of Covid-19 on the restaurant business, which could

not have been forecast in 2018. Further, it is also impossible to know what the valuation of the Stockport Road property would have been at that stage. Yet further, there is the complication of how to treat the forfeit deposit and also what would happen if the Court of Appeal was to overturn my third judgment. Additionally, as Mr Mather says, it was not an offer which was capable of acceptance, since it was subject to contract, and it also contained a number of terms not directly related to the partnership dispute, such as the terms in relation to any financial ancillary relief proceedings between Tariq and Nusrat. For all of these reasons, I agree with Mr Mather that the refusal of the offer cannot be treated as comparable to a more straightforward financial offer in a more straightforward case.

39. Further, Tariq did not simply ignore or refuse the offer. Indeed, the counter-offer made in response by Tariq on 6 June 2018 was not too far removed from the offer in its essential terms. I accept, as Ms Anderson QC submitted when she took me through the subsequent correspondence, that progress towards a final compromise was derailed because Tariq made a different proposal direct to the defendants, which then became the subject of attention instead, but that progress in relation to this proposal was delayed when he removed instructions from his then solicitors, when he delayed unreasonably in seeking to resolve matters, and when he finally reverted to a much less realistic offer. However, it is also true that thereafter Mahboob - very probably in justified irritation at Tariq's conduct - reverted to a much less realistic offer and the opportunity to settle on reasonable terms was lost.
40. Accordingly, I proceed on the basis that the offer ought not to be given anything like the weight which a well-judged admissible offer might have in a straightforward claim where the claims and counterclaims are clear and where the eventual outcome can be compared with confidence to the terms offered, so that it is obvious whether the eventual outcome was better or worse than the terms offered. It follows that it is unnecessary for me to grapple with the potentially difficult question as to whether or not I should await the outcome of the appeal before I make my final decision on costs. That is because the offer is relevant only insofar as it shows that at an early stage Mahboob made a sensible proposal, which recognised the underlying merits, and which provided a platform to what ought to have led to a settlement which did not happen primarily due to Tariq's subsequent prevarication and change of position.
41. It follows from this conclusion that it is not necessary, it seems to me, to include any provision under which either party should have permission to apply in relation to this costs order once the appeal is determined.

F. [Final conclusion on costs overall](#)

42. In my judgment, having regard to all of the relevant factors, the appropriate order is no order as to costs as between Tariq and the defendants in relation to the costs of the whole proceedings save as already the subject of existing costs orders and save in relation to the costs of the enforcement application dealt with below.
43. In summary, that is because although Tariq is, as I have said, the successful party, the extent of his failure on substantial issues, both in terms of their value and the time and cost to litigate them,

when coupled with his conduct (both as a witness and as regards the “volte-face”) and coupled with the fact that he was not prepared to settle on terms which broadly reflected the eventual outcome in terms of the division of the partnership assets as actually determined, leads me to the conclusion that neither party is in substance the winner. In reality, this is a case where the two most important issues were: (a) first, whether there was a partnership which ought to be wound-up; and (b) second, were the assets of that partnership as extensive and as valuable and substantial as contended for by Tariq. Whilst Tariq succeeded on the former he lost on the latter and, in those circumstances, making no order as to costs is the fairest overall outcome.

G. Costs of the enforcement application

44. This issue is relatively straightforward in my judgment. Following my third judgment dismissing Tariq’s application Mahboob was entirely justified in making this application to compel Tariq to do what he was required to do under the order made on 10 June 2021 and the sale mechanism. Tariq’s application for a stay pending appeal was refused by the Court of Appeal, since it was clear that his only interest in the appeal was financial. He had no proper basis, therefore, for refusing to execute the relevant documents to allow completion to take place. The evidence put forward by Mahboob demonstrated quite clearly that over an extended period Tariq had failed to comply or had obfuscated without providing a proper explanation. He did not put forward any evidence in response to the application and chose not to attend. The witness statement which he adduced in a belated attempt to explain why he could not execute the relevant documents whilst in Pakistan failed to provide cogent objective evidence that the security situation in the area where he is living was such as to prevent him from doing so, and nor did it explain why he had failed to take the necessary steps to arrange for documents either to be signed by his solicitors on his behalf or using an electronic document signing platform. Given the adverse conclusions I have formed against Tariq’s reliability as a witness in two separate trials I see no reason why I should simply accept his uncorroborated assertion that he was unable, despite taking reasonable steps, to do so.

45. However, I am not persuaded that his conduct was such as to merit an award of indemnity costs. Unjustified foot dragging is different from intentional defiance of court orders and I am not satisfied that this is a case of the latter. Mahboob chose, no doubt for perfectly good commercial reasons, to move swiftly to complete the transaction, but I am not satisfied that Tariq should have to pay the costs of that process on the indemnity basis. The costs claimed are very substantial and should be summarily assessed by me on the standard basis. I will ask Tariq’s advisers to file (and copy email to me) and serve any written submissions on the schedule of costs by 5pm within two working days of receipt of this judgment, Mahboob’s advisers shall then have a further two working days to reply (copy to me as before) and I will then summarily assess on the papers.

H. Other matters

46. A number of supplemental costs issues were canvassed in written and oral submissions which I think I can now deal with reasonably briefly.

47. Paragraph 52 of Tariq's written submissions. There is now no need for any detailed assessment or payment on account.
48. Paragraph 53 of Tariq's written submissions. There is now no basis for any costs set-off.
49. Paragraphs 54 and 55 of Tariq's written submissions. Mr Mather and Mr Wraith's proposals as to the costs of the sale process seem sensible and subject to any further submissions can be dealt with on that basis.
50. Paragraph 56 of Tariq's written submissions and paragraph 6(c) and (d) of Mahboob's written submissions. I agree that the final order as regards payment out of the escrow account can be determined if not agreed now this judgment is available. It would appear that the sensible course would be for Tariq's liability to Mahboob for costs summarily assessed under the order made at the hearing on 14 October 2021 to be deducted from the payment to him out of the escrow account, and that the full amount of the costs claimed for the enforcement application can also be deducted for the time being, so as to allow payment of the balance to be made, with any further payment representing the difference between the amount claimed and the amount summarily assessed being released once I have summarily assessed those costs.
51. Paragraph 6(h) of Mahboob's written submissions. Interest on costs is no longer an issue.