Neutral Citation Number: [2024] EWHC 1178 (Ch)

Case No: BL-2023-001601

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**COMPANIES COURT**

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

Date: 16/05/2024

**Before**:

**THE HONOURABLE MR JUSTICE ROTH**

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**Between:**

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| **SCENIC INTERNATIONAL GROUP LIMITED**<br>**(In Provisional Liquidation)** | **Claimant** |
| **- and -** | |
| **(1) RICHARD ADENAIKE**<br>**(2) ANDREW PETERS**<br>**(3) AIGG HOLDINGS LTD**<br>**(4) EMPLOYMENT LAW & HR SOLUTIONS LTD**<br>**(5) JOYCE EZED**<br>**(6) BRASAA CORPORATION U.K. LIMITED**<br>**(7) SAM ADENAIKE ALSO KNOWN AS SAMUEL ADENAIKE AND SAMUEL BABS ADENAIKE AND ALSO KNOWN AS SAMMO ADENAIKE**<br>**(8) LEAH ADENAIKE** | **Defendants** |

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# RULING: COSTS

**Mr Justice Roth :**

1. This matter came before the Court in the Interim Applications list on 30 April 2024, on the application by the Claimant for continuation by way of post-judgment orders of the pre-judgment freezing orders granted against the First and Fourth to Sixth Defendants. The First Defendant appeared in person, as he had at the hearing on 20 December 2023, the return date on which Mr Justice Fancourt had continued the pre-judgment orders originally made without notice. As he had previously, the First Defendant was acting on his own behalf and on behalf of the Fifth Defendant (his wife) and of the Fourth and Sixth Defendants (companies of which he is a director). However, he had the benefit at the hearing of representation from counsel acting under the CLIPS scheme.

2. Following the hearing which, with breaks for the CLIPS representative to take instructions from the First Defendant, lasted a little over two hours, the Court gave a short judgment after the lunch adjournment resolving various disputed matters and, subject to some variation which is not relevant for present purposes, granting the orders sought by the Claimant. The Court further held, in response to the Claimant's request, that the relevant defendants should pay its costs.

3. In the ordinary way, those costs would have been summarily assessed there and then. But when I asked for a schedule of those costs, I was told that none had been prepared and I was asked to direct a detailed assessment of the costs (if not agreed). The explanation I was given as to why there was no schedule of costs was that it was felt that it was unlikely that the Claimant would succeed in recovering costs and that it was therefore disproportionate to incur the expense of preparing a schedule of costs.

4. This is a mistaken approach. A party may of course decide that it will not seek its costs because it considers that the chance of ever recovering costs are so low that it does not wish to spend even the modest costs of preparing a schedule of costs for summary assessment. But if it does want an order for its costs, then for a relatively routine application for freezing orders in the Interim Applications list, the general rule is that such costs, if ordered, should be summarily assessed: see Practice Direction 44, para 9.2(b). The whole point of summary assessment is that it is much more efficient, both because it can be done quickly and because the judge who has heard the application is in a better position to assess the costs than a costs judge who lacks that advantage and comes to the matter many months later. It is inappropriate and contrary to the overriding objective to ask for those costs to be the subject of detailed assessment because the claiming party, while wishing to preserve its right to recover costs, does not want to incur the small additional expense of preparing a schedule. That is particularly striking in the present case, where once a schedule of costs was subsequently produced the costs are shown as over £36,000 but the costs of preparing that schedule were only £1,615.

5. I accordingly refused to direct a detailed assessment, but directed that if the Claimant wished to recover costs it must file a schedule of costs in proper form and that I would then determine a summary assessment on the papers. A schedule was then filed accompanied by a covering letter from its solicitors explaining some of those costs. However, the result of this is that whereas the CLIPS representative could assist the First Defendant, and in effect all the relevant defendants, at the hearing, the defendants are deprived of his assistance by way of scrutiny of the costs schedule. And a litigant in person cannot be expected to make detailed observations on the items in a solicitors'

costs schedule other than the general, and almost invariable, reaction that those costs are too high. It has therefore fallen to the Court to scrutinise the schedule with particular care.

6. I appreciate that in the underlying proceedings these were substantial claims based on sustained tax and VAT fraud. However, by the time of this application, the Claimant had obtained default judgments against all the defendants. Pre-judgment freezing orders had already been obtained. In those circumstances, the application to, in effect, continue the pre-judgment orders as, now, post-judgment orders was not particularly complex. I therefore find that total costs of over £36,000 (which does not include VAT) for this exercise appears to be disproportionate and unreasonable. While it is true that the First Defendant produced for the court large bundles seeking to go into the merits of the Claimant's underlying claim, it was obvious that the court would not entertain such arguments after judgment had been entered and the skeleton argument from counsel for the Claimant, entirely appropriately, did not address those matters and comprised 11 pages.

7. I think the high level of fees is due in part to the hourly rates charged for some of the solicitors involved. Two of the three partners handling the case charged at £595 per hour, whereas the updated (2024) guideline rate is £546 per hour. In addition, one of the Grade D solicitors was charged out at £250 per hour, which is 25% above the guideline rate of £198 per hour. Those guidelines are for "very heavy commercial and corporate work" by centrally based London firms. This application just about comes into that category, but certainly does not justify any uplift. See *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466.

8. Work done on documents accounts for £5700 of the total, but the schedule in this regard is confusing and, it seems, inaccurate. It shows almost 4 hours work done by a Grade C solicitor. For the work involved, that would be reasonable, but from the figures it appears that all that work was in fact done by a Grade A solicitor and is charged at £550 per hour. That is not proportionate. Further, the schedule shows 2.4 hours work by a Grade B solicitor but no Grade B solicitor is identified in the list of fee earners. In fact, from the figures it appears that those hours were expended by the more senior Grade A solicitor charged at £595 per hour.

9. The above observations in themselves would lead to a reduction by way of summary assessment of the level of costs. However, PD 44 at para 9.5 requires a party who intends to claim costs to file its written schedule of costs at court and serve it on any party against whom costs are sought no less than 24 hours before the hearing. As noted above, in this case the schedule was produced only one week *after* the hearing, and at the Court's direction. Para 9.6 of PD 44 states as follows:

> "The failure by a party, without reasonable excuse, to comply with paragraph 9.5 will be taken into account by the court in deciding what order to make about the costs of the claim, hearing or application, and about the costs of any further hearing or detailed assessment hearing that may be necessary as a result of that failure."

10. I have explained that there was no reasonable excuse for the failure in this case. And I regard the failure as the more serious in a case where the Claimant knew that the

defendants were unrepresented and could have expected, from the experience of the previous hearing in December, that the First Defendant would appear in person and therefore have the assistance of a CLIPS barrister on the day of the hearing but not thereafter. I do not suggest that the Claimant's approach was a deliberate tactic to avoid the defendants having such assistance on the matter of costs, but this was nonetheless a foreseeable consequence.

11. I accordingly take this into account, along with my view of the proportionality and reasonableness of the costs charged. I assess the solicitors' costs, on a broad brush basis, at £12,000, to which is added counsel's fees of £10,960, which I regard as reasonable given the history of the matter and some of particular features of the proposed orders regarding expenses which were the subject of dispute. With the addition of the court fee of £275, this produces a total figure of £23,235. I therefore assess the costs in that amount.