Neutral Citation Number: [2024] EWHC 1746 (Ch)

Case No: CH-2023-000130

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS
APPEAL AGAINST DECISION OF ICC JUDGE JONES 25.5.2023
CASE REF. CR-2022-000092

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

Date: 05/07/2024

Before :

SIR ANTHONY MANN
Sitting as a Judge of the High Court

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Between :

Daniel McAteer	**Appellant**
- and -	
(1) Hat & Mitre (In Liquidation) **(2) Richard Toone and (3) Jason Maloney** **(as Joint Liquidators of Hat & Mitre Plc (In Liquidation))**	**Respondents**

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Stefan Ramel (instructed by **Knights Professional Services**) for the **Applicant**
Joseph Curl KC (instructed by **Ashfords LLP**) for the **Joint Liquidators/Respondents**

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APPROVED JUDGMENT

Sir Anthony Mann :

1. When I handed down my judgment in this matter under the remote procedure, I directed that the parties file draft orders and submissions to deal with consequential matters. They have now done that, and this is my judgment on consequential matters. I have dealt with the matter on the basis of written submissions and without a further hearing.

2. In my judgment I gave permission to appeal but dismissed the appeal. The respondents adopt the straightforward position that they have been successful, so costs should follow the event. The unsuccessful appellant does not seem to challenge the proposition that the respondents should have their costs (at least not according to counsel's skeleton argument), but says that they should receive only 66% of the costs.

3. The appellant's position would seem to be based on the fact that Mr McAteer won on one issue, namely whether he was a contributory. The skeleton argument prepared for the appellant for the purposes of the consequential matters (signed by his solicitors Knights, not by Mr Ramel who appeared before me) asserts that "A very large amount of time and fees" were incurred on this issue, and that that justifies an issue based costs order which requires the reduction of 33%.

4. Were I satisfied that a large amount of time and fees were involved in the point I might have been minded to make a reduction in respect of the liquidators' unsuccessful case that Mr Mcateer was not a contributory. However, I am not so satisfied. It is merely made as an assertion, without any particularisation or evidence. In the absence of such material it is not at all convincing as an analysis. The point was a relatively short point of statutory construction involving a relatively quick trip through a number of sections with virtually no authorities involved. It involved a small part of a much bigger picture involving two agreements and other arguments. Not all successful points justify a reduction of costs, as authority well establishes, and the point made no difference to the result at the end of the day. No deduction is justified in respect of this point.

5. That means that the liquidators are entitled to the whole of their costs without any deduction in respect of that issue. Knights' skeleton argument also rely on what it describes as the liquidators' "repeatedly 'moving the goalposts'". It is not clear what it meant by that. It also refers to Mr McAteer's conduct in applying to the court as a last resort when he had previously made "strenuous efforts" to find a resolution out of court. Again, the skeleton does not, itself, particularise that, but it records the request of Mr Mcateer himself to upload his own written submissions on the point, which in turn annex some historic correspondence, mainly from him without setting out many responses coming back.

6. The technique of a practitioner who submits a skeleton argument also providing submissions directly from the client without actually adopting them is not to be encouraged. The client has instructed lawyers, and they make submissions and will be expected either to adopt what the client wishes to say as part of those submissions, or not make them if they are submissions which the professional feels he/she cannot properly make. That is a valuable and proper filter which saves court time being wasted. However on this occasion I record that I have read Mr McAteer's submissions and the correspondence annexed. While I acknowledge that conduct in relation to proceedings, including taking steps to avoid them, would be capable of going to the question of the incidence of costs, the material submitted by Mr McAteer does not come close to raising some sort of viable point in that respect. For example, it demonstrates that he was making various proposals to the liquidators which included proposals to buy out the shareholders, but they do not, for example, demonstrate that he approached the shareholders and established that they would be willing to sell. In fact the evidence demonstrates that they would not, and he has not demonstrated that that is somehow an unreasonable position which means that in this litigation against the liquidators he should have to pay less than all the costs. Furthermore, the correspondence is not complete, so I do not know what the response to his proposals was and the reasons given. Partial correspondence in relation to a matter with a backgrounds as complex as the present matter does not get a conduct-based submission off the ground.

7. In those circumstances no issue-based, or conduct-based, deduction from the normal rule as to costs is justified and I do not make one.

8. I am not asked to assess the costs (even though the appeal took less than a day), but I am asked to order a payment on account. I am willing to allow the costs to be assessed by a costs judge, not least because I am concerned at the overall level of the costs claimed. The liquidators' costs schedule claims costs of £63,988 plus VAT of £12,798. The overall bill needs to be carefully scrutinised by a costs judge, but the following points occur to me as potentially being susceptible to significant adjustment:

   (a) It is not clear that VAT is recoverable; I do not know how liquidators treat VAT and its recovery, but it is not obvious to me that the VAT is not recoverable elsewhere. There will doubtless be a straightforward answer to that, but I do not know what it is.

   (b) 7 hours were apparently spent at partner level reviewing and analysing the respondents' bundle. A bundle obviously had to be prepared but not by a partner (and there is a separate charge for a Grade C solicitor for that); 7 hours review and analysis is not an obvious item.

   (c) 7 hours of partners time on corresponding with the other side will need to be justified. This was an appeal, not first instance litigation.

(d) Likewise 9 hours of partner time I correspondence with the client. Some of that is doubtless justifiable, but it will need looking at . There was also 3 hours on the telephone.

(e) Counsel's brief fee of £30,000 will also need scrutiny.

9. Taking those and other matters into account I will order a payment on account of costs in the sum of £20,000, payable, as usual, within 14 days of the sealing of the order.

10. No other point in issue was raised in the skeleton arguments. An order can now be drawn which encapsulates my decision on the fate of the appeal and the costs.