



Neutral Citation Number: [2024] EWHC 2245 (Ch)

Case No: BL-2020-001417

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

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

Date: 30/08/2024

**Before :**

**MR JUSTICE FREEDMAN**

**Between:**

**MATRIX RECEIVABLES LIMITED**

**Claimant/Respondent**

**- and -**

**MUSST HOLDINGS LIMITED**

**Defendant/Applicant**

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**Mr Peter Knox KC and Katherine Bailey** (instructed by **Taylor Wessing LLP**) for the  
**Defendant/Applicant**

**Mr Nicholas Gibson and Mr Anirudh Mathur** (instructed by **Mills & Reeve LLP**) for the  
**Claimant/Respondent**

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**Approved Costs Judgment**

**This judgment was handed down remotely at 2pm on 30 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.**

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**MR JUSTICE FREEDMAN :**

1. This judgment is to be read alongside the earlier judgments in this matter. In the judgment dated 17 June 2024, neutral citation [2024] EWHC 1495 (Ch), the Court ruled on a strike-out application made by Musst against MRL. In the judgment dated 19 August 2024, neutral citation [2024] EWHC 2167 (Ch), the Court made rulings about costs.
2. The court has ruled that the costs of the application for summary judgment in favour of MRL on the grounds of summary judgment and abuse of process (“the March Application”) should be paid by Musst to MRL. At the same time, the Court ruled that there should be no order as to the costs of the strike out for collateral use application and the retrospective permission application. Likewise, the Court ordered that there should be no order as to costs in respect of the application to re-amend the Particulars of Claim save for the costs of and occasioned by the re-amendment itself.
3. This is the Court’s ruling in respect of the quantum of the payment on account in respect of the costs of the March Application. MRL’s statement of costs in respect of the March Application comprises a sum of £274,138.61. It submits that the Court should treat an appropriate percentage for a payment on account to be 70% comprising a sum of £191,897.03.
4. Musst takes issue on two principal points, namely:
  - (i) the appropriate percentage should be 60% and not 70%;
  - (ii) the sum against which the percentage should be applied should be by reference to the costs schedule of 2 May 2024, adjusted upwards only by reference to the adjustment made in respect of Musst’s costs as an appropriate guideline for this purpose.
5. On this basis, Musst submits that the sum should be (1) 60% of a sum of £146,213.97 (the sum in the 2 May 2024 schedule) comprising £87,728.38, and (2) 60% of an extra £48,246.16 (the adjustment of Musst) comprising £28,947.70. This leads to a total sum of £116,676.08 instead of £191,897.03.
6. It is not necessary to address every point made, albeit that I have considered each of the points contained in the written submissions of MRL dated 16 August 2024 and the written submissions of Musst dated 22 August 2024. They both cite passages from the case of *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm) at paras. 23-25, 28.
7. Although I have been guided by the observations there cited which are of more general guidance than the facts of that case, there are important points to be added. First, the particular factors weighing in each case are fact specific to the case itself. Second, despite the general guidance, it should be still noted that *Excalibur* was an unusual case involving huge costs and very serious criticism of conduct giving rise to indemnity costs. In the instant case, there has been rejected a submission about indemnity costs, the case lasted two days and the parties are apart by tens of thousands of pounds,

whereas the issue of even the payment on account of costs in *Excalibur* involved many millions of pounds.

8. There are also certain points specific to this case to be mentioned.
9. First, in the instant case, both parties have attached importance to the costs of the other. As is inevitable, and no criticism is intended, this tends to be selective. For example, MRL points to aspects of Musst's charges which are greater than its own, whilst Musst points to aspects of its charges which are smaller than those of MRL. It is important to recognise that the costs of the other party are only a factor and are not decisive. This was described as follows in the Guide to the Summary Assessment of Costs 2021 Edition produced by the Civil Justice Council summarising the weight to be given to the costs of the paying party at [11]:

*“The costs which the paying party has incurred for its own representation may be relevant when considering the reasonableness and proportionality of the receiving party's costs. However, they are only a factor and are not decisive. Both parties may have incurred costs which are unreasonable and disproportionate, but only reasonable (and, on the standard basis, proportionate) costs may be allowed.”*

10. Second, a degree of caution should be applied to costs incurred during the hearing in addition to the costs contained in the cost schedule lodged prior to the hearing. The instant hearing was fixed to take place before and after a Bank Holiday weekend in order to accommodate the commitments of Counsel and the Court, that is to say on Friday 3 May 2024 and Tuesday 7 May 2024. After the judgment had been handed down and as part of the consequentials, when the successful party could be identified, there were further costs schedules comprising additional costs particularly over the bank holiday weekend. Those costs have been considerable comprising several tens of thousands of pounds, large by themselves and large as a proportional uplift to the costs already contained in the original costs schedules lodged prior to the hearing.
11. This is not to say that unexpected events do not occur. Indeed, in this case both parties have made adjustments comprising additional costs as is apparent from the Agreed Summary of Costs of the parties. The March Application costs of MRL have increased by a sum of £127,924.64 from £146,213.97 to £274,138.61: that is to say an increase of more than 87%. The March Application costs of Musst have increased by £48,246.16 to a sum of £289,949, that is to say an increase of almost exactly 20%. Even taking into consideration the explanations given by MRL in written submissions, and the fact that the comparison of the paying party is only a factor, particular caution is required in respect of the additional costs of MRL. At the time of the additional schedule, the judgment on the two-day application had been handed down, from which the identity of the successful party on the March Application was known. Accordingly, particular scrutiny of an addition to the costs of the successful party is required without any suggestion that there was an improper motive in the increase. That scrutiny would occur on a detailed assessment, and this is a factor to be taken into account in tempering the amount of the payment on account of costs.

12. Third, in a case where there are costs orders relating to different applications which are heard at the same time, and where those costs orders are not the same, there has to be a caution in relation to the apportionment between the various applications. In the instant case, as is apparent from the Agreed Summary of Costs, MRL's additional costs in respect of the retrospective permission (which appears to include the collateral challenge costs) and in respect of the re-amended particulars of claim is very broadly less than 10% of MRL's March Application costs. By contrast, Musst's additional costs in respect of the retrospective permission and the re-amended particulars of claim costs are very broadly 30% of Musst's March Application costs.
13. Here too, and without suggesting improper motives to either side, there is scope for caution that the successful party or the losing party in respect of the March Application might have different perspectives of the costs attributable to the other applications. In considering the amount of the payment on account of costs, the amounts may need to be tempered to take into account a different apportionment which may be imposed by a costs judge.
14. At this stage, in deciding an appropriate payment on account of costs, a fairly broad brush has to be applied. That is particularly to take into account the matters set out above. In my judgment, 70% is too high a starting point unless the calculations are straightforward and the points of dispute limited. I should have decided without more that a lesser percentage towards 60% would be an appropriate percentage. In the instant case, and to take into account the point about apportionment, I should use a percentage of 60% of the costs as reflected in the costs schedule of 2 May 2024.
15. The Court would approach the additional costs in a different manner from that of either MRL or Musst. There should be reductions to take into account the particular scrutiny which will attach to the additional costs. There is no entirely satisfactory explanation at this stage of how the costs could have increased by over 87% that could not have been foreseen as at the time of preparation of the costs schedule of 2 May 2024.
16. A factor is to look at the comparison with Musst, but it is not more than a factor. Musst appear to have used their additional costs not as a factor, but as the decisive factor at least for the purpose of calculation of a payment on account. That is to treat as more than a factor the comparison between the costs of the paying party and the costs of the receiving party. The factors which may have generated additional costs may be different on the part of MRL from Musst, and only a detailed assessment will show that they were. It is not suggested that the additional fees have not been incurred, rather that MRL will not be able to show that they were reasonable and proportionate.
17. Looked at with the fairly broad brush appropriate for a payment on account, I have reached the conclusion that instead of awarding a percentage of 60% in respect of the additional costs sought, the appropriate percentage for the entirety of the additional costs sought is 50%. That is to reflect the level of additional costs relative to the 2 May 2024 schedule and the difficulties which may be encountered by the MRL in proving that the level of additional costs is reasonable and proportionate.
18. On this basis, the payment on account is to be calculated as follows:
  - (1) 60% x costs as per costs schedule of 2 May 2024 of £146,213.97 = £87,728.38;

(2) 50% x additional costs of £127,924.64 = £63,962.32

Total = £151,690.70.

19. There have been other points raised in the written submissions which do not take the matter much further. First, they include the points of criticism about the way in which Musst's case was presented which have more relevance to the case for indemnity costs, on which I have ruled. If they are relevant and well made, they may on a detailed assessment help to explain why a two-day case has generated this level of fees, but they do not by themselves provide an explanation of the level of increase of the fees from the 2 May estimate to that claimed on 30 July. Second, little impact is made by the suggestion of MRL that the March Application was more critical for them than for Musst because of the consequences of losing or of Musst that they had to prepare the bundles. There were particular challenges for both parties, and in the end, these points are on the margins.
20. Finally, it is submitted by MRL that there may be difficulties in MRL making recovery from Musst. This point is based on the fact that 98% of the moneys received from Astra was paid out and so it is said that there may be no money to pay the costs. This is possible, but it is not a developed point. If it were believed to be the case by MRL, then it is difficult to know what the point of the action would be. There may be ways of recovering at least the costs if not the principal claim. I have had some regard to this point in the overall figures, but do not regard it as a major point in the scale of things.
21. I shall in the circumstances make an order that the sum of £151,828.20 should be paid by Musst to MRL as a payment on account of costs of the order for costs made in respect of the March Application. As already ordered, the time to pay will be 28 days from the date of the order.