



Neutral Citation Number: [2024] EWHC 455 (Ch)

Case No: BL 2023 001118

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

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

Date: 1 March 2024

Before :

HHJ JOHNS KC

Sitting as a Judge of the High Court

Between :

LEE CHU

Claimant

- and -

(1) KIN MING JE
(2) SIN TING RONG

Defendants

MR PAUL DOWNES KC and MS EMILY SAUNDERSON (instructed by **Weightmans LLP**)
for the **Claimant**

MR JAMES RAMSDEN KC (of **Astraea Group Limited**) for the **First Defendant**

MR LAWRENCE POWER and MR CHRISTOPHER HANGES (by **Direct Access**) for the
Second Defendant

Written submissions: 12 & 19 February 2024

APPROVED JUDGMENT

This judgment is handed down by email to the parties' representatives and release to The National Archives at 10.30 am on Friday 1 March 2024

HHJ JOHNS KC:

Introduction

1. This is my judgment on costs following my determination of a suite of interim applications on 23 January 2024 (under neutral citation number [2024] EWHC 90 (Ch)). I had the benefit of written submissions on costs from all sides which I thank counsel for.

Incidence of costs

2. Starting with the incidence of costs, I approach that question on each of the applications as required by CPR 44.2; that is by seeking to identify the winner and giving weight to the general rule that the winner should receive their costs, but then asking whether the court should make a different order. One such different order is an order that a party pay a proportion of the successful party's costs – see CPR 44.2(6)(a). Overall, the discretion as to costs should be exercised by doing what justice requires.
3. The application by Ms Chu against Mr Je for a worldwide freezing injunction and asset disclosure order was successful. Ms Chu asks for an order that Mr Je pay her costs of the application. The submissions of Mr Je on this, and on the costs of the other applications on which he lost, on the one hand accepted that he should pay Ms Chu's reasonable and proportionate costs of the application, but on the other asked for a "discount" of 50 percent which was said to "affect not only the quantum of the ultimate order but also that of any payment on account". I have taken the submissions as an invitation to consider whether Ms Chu should have only a proportion of her costs of the applications. That invitation relied, for this

application, on criticism of Ms Chu's conduct, including as to delay and a need to amend in relation to the Hamilton Opportunity Fund.

4. The right order is an order that Mr Je pay Ms Chu's costs of this application. Not merely a proportion of those costs. The general rule is that Ms Chu should have her costs of the application from Mr Je. The criticisms made do not justify a different order. Delay was one of the arguments put forward in resisting the application. That resistance failed, including on the ground that there was some explanation for some of the delay. If there is amendment of the claim relating to the Hamilton Opportunity Fund, it can be expected that there will be an order for Ms Chu to pay the costs of and occasioned by the amendment. That will be a sufficient costs consequence for any failure. Overall, this application was heavily resisted by Mr Je. Justice requires that Ms Chu has her costs of the exercise paid by Mr Je. I make clear my order includes the costs of the without notice hearing on 17 August 2023 so far as they can be shown on assessment to be reasonable and proportionate. The costs of that hearing were simply reserved by the judge, Michael Green J, so that absent a different later order they would be costs in the application – see CPR PD 44 at 4.2. Nothing has emerged which requires a departure from the general rule so as to disallow now that part of the costs of the application. That is underlined by the fact that Mr Je relies on the exchanges between Ms Chu's counsel and Michael Green J. But he did not disallow the costs.
5. The application by Ms Chu against Ms Rong for a worldwide freezing injunction and asset disclosure order was dismissed. Ms Rong asks that Ms Chu pay her

costs of the application. That is accepted by Ms Chu. I will therefore make that order.

6. Mr Je's application to strike out the Particulars of Claim was dismissed. Ms Chu seeks an order that Mr Je pay Ms Chu's costs of the application. Mr Je accepts some liability for costs, but again says it should be for only 50 percent of Ms Chu's costs. He points to the judgment that there were some fair criticisms of the Particulars of Claim, which were "not a model of fullness, clarity or accuracy". And to the later application to amend in relation to the Hamilton Opportunity Fund. But just as I decided it would be an overreaction to those imperfections to strike the claim out, so it would be an overreaction to depart from the general rule so as to allow Ms Chu only a proportion of her costs of this application. While some criticisms were fair, the simple point is that they did not justify a strike out. And they were accompanied by a raft of other points made in a comprehensive attempt to knock this claim out at the first stage. That comprehensive attempt having failed, justice requires that Ms Chu has her costs of the contest.
7. Ms Rong's application to strike out those parts of the Particulars of Claim relating to her was also dismissed. Ms Chu asks for her costs of the application against Ms Rong. Ms Rong says that there should be no order as to the costs of this application, else she should be ordered to pay only a proportion of Ms Chu's costs. It is right that I regarded the claim against Ms Rong as unlikely to succeed to its full extent. But I decided that Ms Rong's challenge did not justify striking out the claim against her. There is insufficient here to justify a departure from the general rule. Ms Rong should pay Ms Chu's costs of this application.

8. The application by Mr Je contesting jurisdiction was dismissed. Ms Chu asks for an order that Mr Je pay her costs of that application. Mr Je said by his submissions merely that this application took up only a small part of the hearing, asking that that be recognised in the order for costs. But any such recognition seems to me appropriate only in assessing the costs and in fixing any payment on account. That little time was spent in argument on this application affords no reason to depart from the general rule. I will order that Mr Je pay Ms Chu's costs of this application.
9. Ms Rong also made an application contesting jurisdiction which was likewise dismissed. Ms Chu asks for an order that Ms Rong pay her costs of that application. That is accepted by Ms Rong. I will therefore order that Ms Rong pay Ms Chu's costs of this application.
10. There was one procedural application relating to the hearing before me, being an application dated 30 October 2023 by Ms Chu to rely on expert evidence of US law. On that application, I gave permission for such expert evidence. Ms Chu now asks for the costs of that application against both defendants. She points out that neither defendant consented to permission being given. Mr Je says that he should pay 50 percent only of the costs of this application and points to its lateness. Ms Rong says there should be no order as to costs as between her and Ms Chu save that Ms Chu should pay her costs up to 20 November 2023, being the date when her costs of considering the application ended and she adopted a neutral stance.
11. There was a contest on this application between Ms Chu and Mr Je which Ms Chu won. I am not satisfied that any lateness in applying was unreasonable, and so I do not consider there is conduct justifying a departure from the general rule

so as to award Ms Chu only a proportion of her costs. But there should be no order for Ms Chu's costs to be paid by Ms Rong. Ms Rong took a neutral stance. Further, the expert evidence application was concerned with both the freezing order applications and the jurisdiction applications, and there was a score draw on those as between Ms Chu and Ms Rong; Ms Chu failing on the freezing order application but successfully defeating the jurisdiction application. In circumstances where Ms Chu succeeded on the expert evidence application and any lateness was not unreasonable, it would be wrong (and give insufficient weight to the general rule) to go further and order Ms Chu to pay Ms Rong's costs of the application.

12. Mention was made in the written submissions of a second report of Ms Chu's expert served very late. The costs of that evidence may well not be recoverable on an assessment. But that is a question for the assessment.

Assessment

13. I gave a preliminary view that costs should be subject to detailed assessment with consideration then given to ordering payment(s) on account. All three parties adopted that view as to assessment. I therefore direct detailed assessment of the costs ordered.
14. There was one request for costs to be assessed on the indemnity basis. Ms Rong made that request in respect of the costs of the application for a worldwide freezing injunction and asset disclosure order against her. She argued that the claim against her was grossly exaggerated and that it was unreasonable of Ms Chu not to accept an undertaking. These costs should, in my judgment, be assessed on the standard basis. There has not been conduct taking the case out of

the norm so as to justify an award of indemnity costs. I would not characterise the case as one of gross exaggeration. It is simply that Ms Chu was able to establish a good arguable case only in a modest sum. Any exaggeration was innocent rather than culpable. Further, the Chabra basis was anyway relied on in the alternative. And though that alternative argument ultimately failed, the principal objection of Ms Rong to the argument (that an order on that basis could not be made against an existing party) was rejected. Failure to accept an offer is not usually sufficient to found an award of an indemnity costs. There is nothing special in this case requiring that different basis of assessment, particularly as the offer did not include the asset disclosure order being sought by Ms Chu. It is a sufficient costs consequence that Ms Chu is paying Ms Rong's reasonable and proportionate costs of the application.

Payment on account

15. Orders for costs having been made in Ms Chu's favour against Mr Je, a payment on account of those costs should be ordered in a reasonable sum unless there is good reason not to do so – see CPR 44.2(8).
16. No good reason is identified here, and Mr Je accordingly accepts there should be a payment on account. Ms Chu asks for a sum of around £200,000, having spent (according to her statements of costs) around £430,000 on the applications.
17. I have decided that a reasonable sum is £150,000. That represents a little over 50 percent of a sum which is two-thirds of Ms Chu's costs of the applications.
18. Given that the bulk of the time at the hearing (reflected also in the evidence and, I would expect, preparation) was devoted to the contests between Ms Chu and Mr

Je, I would expect at least two-thirds of Ms Chu's overall costs to be referable to the conduct of the applications against Mr Je rather than Ms Rong. I would not expect, given these were hard fought and significant applications, Ms Chu's recoverable costs to be reduced on assessment by as much as 50 percent. I do not fix the reasonable sum any higher as, though (as Ms Chu points out) Mr Je appears to have spent significantly more (over £640,000), that does not seem to me a good guide as to what is reasonable and proportionate. Further, significant costs seem to have been spent dealing with the form of my order which may well turn out not to be reasonable and proportionate.

19. As between Ms Chu and Ms Rong, there are costs orders going in both directions. And allocation, on assessment, of costs between the two main applications (the freezing order and strike out applications) may not be easy, as they can be said to overlap. In addition, while Ms Rong did ultimately ask for a payment on account in the sum of around £77,000, such an order would lack a fair foundation for two further reasons. One, the request, at least with a figure, came only in reply submissions, so that there was no opportunity for Ms Chu to address it. Two, it was unsupported by statements of costs. Ms Rong referred in submissions instead to a bill of costs, but it was apparent that was still in preparation and no final figure was yet available. All those points mean that, as between Ms Chu and Ms Rong, there is good reason not to order a payment on account of the costs ordered on the individual applications.