Neutral Citation Number: [2019] EWHC 292 (QB)

Case No: QB-2019-000347

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/02/2019

Before :

HIS HONOUR JUDGE BLAIR QC
sitting as a Judge of the High Court

- -

Between :

PERKIER FOODS LIMITED	**Applicant**
- and -	
HALO FOODS LIMITED	**Respondent**

- -
- -

Mr Daniel Saoul (instructed by **Fieldfisher LLP**) for the **Applicant**
Mr Stephen Brown (instructed by **RDP Law Limited**) for the **Respondent**

Hearing dates: 6th February 2019

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JUDGMENT

HHJ Blair QC :

Background

1. The Applicant seeks urgent interim injunctions against the Respondent in connection with their commercial relationship. The Applicant designs and creates recipes and specifications for food snack products which it markets and supplies to the wholesale market. The Respondent is involved with assisting companies such as the Applicant in product development and the manufacture of such food snack products.

2. In late 2016 the Respondent approached the Applicant with a view to undertaking the manufacture of the Applicant's products. At that time they were being made by another company. The parties entered into two agreements – the Manufacturing Agreement (dated 5 July 2017) and a Memorandum of Understanding (signed by the Applicant on 5 July 2017 and the Respondent on 10 July 2017).

3. The Manufacturing Agreement set out very detailed arrangements governing, amongst other things, the ordering, manufacture, sourcing of raw materials, packaging and design, stocking, pricing and supply of the Applicant's products according to the Applicant's recipes and purchase orders. The sorts of products it was initially intended to cover were Perkier Bars, comprising a range of differently flavoured healthy snacking bars which were suitable for those suffering from allergies.

4. Section 6 of the Manufacturing Agreement is headed '**Payment**' and clause 6.2 reads: "*The Customer shall settle the Invoice in full within 30 days of the invoice date unless otherwise agreed by the Supplier'* (which reflects Clause 2.7: "*Standard terms shall be 30 days following the invoice date*"). There were contractual provisions for disputes about payment, a mechanism for resolving them and a specified daily rate of interest on overdue amounts.

5. Section 10 deals with '**Term and Termination**'. The Agreement was to continue for 3 years from the date of receipt by the Respondent of the Applicant's first order. Either party could terminate on not less than 6 months' notice, given no sooner than 2½ years into the 3 year minimum term. Further rights of termination at any time were given to each party by clause 10.2. These include: **10.2.a.** a failure to perform a material term of the agreement without remedying it within 28 days of being given notice to do so; **10.2.b.** being in default of payment for 60 days; **10.2.c.** if someone takes any action, application or proceeding in respect of the other for a voluntary arrangement / administration / winding up / liquidation / bankruptcy and the like; and **10.2.d** "*the other is unable to pay its debts within the meaning of Section 123 Insolvency Act 1986…*"

6. Section 12 deals with **Further Product Development and Production Trials**. The parties set out their intentions for the addition of more products to be manufactured by the Respondent pursuant to this contract and the manner by which they would become subject to this contract and, if not, who would bear the development/trial costs. In the latter case, if a full commercial launch did not go ahead within 6 months of production trials being conducted the Applicant would be invoiced for those costs. Full commercial launch is defined as including listings in at least one major multiple

customer and a production forecast for an agreed target prior to Production Trials. The Respondent reserved the right of first refusal to manufacture any of the Applicant's new snacking products which were within its competencies and technologies.

7. At the same time as that Manufacturing Agreement was signed, the Memorandum of Understanding ('MOU') was entered into by the parties. This agreement was solely directed towards the development of something called Perkier Bites. The Applicant had a very great deal of potential market interest in a new concept, namely bags of smaller spherical bite-sized healthy snacks. The Respondent was planning to purchase a new machine, manufactured in Germany (the Kruger machine), which had the ability to produce such moulded shapes. I am told that no other manufacturer in the UK has such a machine and the ability to create these products.

8. The MOU included an acknowledgment by the Applicant that "*equipment acquired by the Supplier is not for the exclusive use of the Customer*" and that the Respondent would procure "*the equipment, machinery and moulds required for manufacturing moulded cereal pieces on a commercial scale*". However, the Respondent also agreed not to use "*this technology to create a product for another customer with the same or similar recipes or which could be mistaken for a Perkier product by a consumer*". Expenses relating to production trials were to be governed by the Manufacturing Agreement and it stated that "**3.3** *a commercial launch resulting from this project shall be incorporated into the Manufacturing Agreement*". The MOU was directed towards the launch of these Bites by early 2018. Either party could terminate the MOU upon breach of the commitments made by the other.

9. It is the Applicant's case that production trials for Bites were complete because the Respondent's Managing Director was saying by email on 10 July 2018 that he did not see what a further trial would achieve and the product had been costed. Post-trial costings had been agreed by the Respondent for the cereal ball launches (email of 13 September 2018 at 12:25). A price adjustment was agreed in October 2018. Final detailed product specifications were concluded on 5 November 2018.

10. The Applicant says it then pursued a full launch of the product and it started placing orders for production - small orders on 16/9/18, 1/11/18, 12/11/18 and 15/11/18 (presumably as samples for the launches) followed by orders worth £20,034 on 16/11/18 and £30,041 on 19/12/18. The Respondent had provided its costings on 13 September 2018 based on the final trial production parameters and accepted it would foot the trial costs if the Applicant ordered at least 500,000 bags of each of the 3 variants of the Bites in a 12 month period. It was acknowledged by the Respondent that it would take up to 6 months to build up to the necessary minimum production run of 80,000 bags (and a minimum of 40,000 bags per flavour) but that no order would be below £15,000 during the build-up to that level. It would seem to me that the 16/11/18 and 19/12/18 orders were placed with that very much in mind.

11. The Applicant states that the Bites product is fundamental to its continuing growth and to attracting customers in a highly competitive market place. It is in the midst of a funding round in order to attract capital for scaling-up its business and any interference with its current course will be catastrophic to its very existence.

12. On 14 January 2019 the Respondent's Managing Director telephoned the Applicant's Managing Director to say that the Respondent would no longer produce the Bites.

13. The Respondent says that the Applicant has not been co-operative in addressing necessary adaptations to its product specification, which it says are required because the manufacturing process is not capable of efficiently coping with handling the ingredients in a large scale production run to achieve the requisite level of quality control and without causing costly failures of parts of the equipment. Essentially, the Respondent says that the product cannot be produced efficiently at the price levels agreed. The Applicant says that the Respondent successfully produced the first two large orders and it must continue to fulfil all of its contractual obligations. It seeks a mandatory injunction requiring the Respondent to continue to manufacture the Bites to the contractual specification and deliver them to their order as required by the Manufacturing Agreement.

14. Various justifications have since been put forward by the Respondent for refusing to manufacture and supply the Bites. Some concern pricing, some the interpretation of the contractual agreements, some involve criticisms of the Applicant's conduct.

15. The next step taken by the Managing Director of the Respondent on 18 January 2019 was to seek to impose a credit limit upon the Applicant of £20,000. A few minutes later he emailed to decline to undertake any New Product Development ('NPD') in 2019, referring to clause 12.6 of the Manufacturing Agreement (the clause giving the Respondent first refusal on developing any new snacking products). The Respondent later confirmed that it had not intended this to be taken as indicating that it was declining to continue their ongoing NPD on the Applicant's Bars which had already commenced.

16. A skeleton argument in relation to this application was prepared by counsel on behalf of the Respondent the day before the hearing which explained the latter NPD position and stated (at paragraph 39) "*…The Manufacturing Agreement is nothing more than a commercial supply contract with a short finite period to run. Halo will continue to supply Perkier Bars for its term which account for 91% of Perkier's turnover*".

17. However, notwithstanding that being part of the Respondent's stated position on 5 February 2019 through its counsel's skeleton argument, an undated letter was delivered to the Applicant on the morning of the hearing from Mr Tague, the Managing Director of the Respondent, which reads as follows:-

> "*I refer to the Manufacturing Agreement between Perkier Foods Limited and Halo Foods Limited dated 5 July 2017 (the "Agreement").*
>
> "*This letter constitutes written notice of immediate termination of the agreement pursuant to clause 10.2.d.*"

18. So Mr Tague was now seeking to terminate the Manufacturing Agreement governing the production of all of the Applicant's Bars and, arguably, its Bites. Under clause 10.2.d. a party may terminate the agreement "*if…the other is unable to pay its debts within the meaning of Section 123 Insolvency Act 1986…*"

19. For this reason it was argued on behalf of the Respondent before me that there is a preliminary question for me to determine because, if the Applicant fails to persuade me that there is an arguable case that the purported termination of the Manufacturing Agreement is invalid, then the application for an injunction falls away.

The preliminary question

20. Unfortunately, because the point had only arisen within the preceding few hours, I was not addressed by counsel about the law concerning such a purported termination of contract in any great depth.

21. Mr Tague, by his written notice, was declaring that the Applicant is unable to pay its debts. During argument Mr Stephen Brown (for the Respondent) argued that when Mr Tague purported to terminate the agreement on the basis that "*the other is unable to pay its debts within the meaning of Section 123 Insolvency Act 1986*" he was doing so by reference to the balance sheet test in s.123(2).

22. Section 123 of the Insolvency Act provides (so far as is relevant):-

> "(1) A company is deemed unable to pay its debts—
>
> (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
>
> (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or…
>
> …(e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
>
> (2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
>
> (3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV."

23. The proper application of ss 123(1)(e) and 123(2) (and specifically, the inter-action between them) was the subject of consideration by the Supreme Court in BNY

Corporate Trustee Services Ltd v Eurosail-UK-2007-3BL plc [2013] UKSC 28; [2013] 1 WLR 1408 (where s.123 had been incorporated into loan note documentation as a condition of default).

24. Lord Walker said this (at [37])

> "…the "cash-flow" test is concerned, not simply with the petitioner's own presently due debt, nor only with other presently due debt owed by the company, but also with debts falling due from time to time in the reasonably near future. What is the reasonably near future, for this purpose, will depend on all the circumstances, but especially on the nature of the company's business."
>
> "…The express reference to assets and liabilities is in my view a practical recognition that once the court has to move beyond the reasonably near future (the length of which depends, again, on all the circumstances) any attempt to apply a cash-flow test will become completely speculative, and a comparison of present assets with present and future liabilities (discounted for contingencies and deferment) becomes the only sensible test. But it is still very far from an exact test, and *the burden of proof must be on the party which asserts balance sheet insolvency*..." [my emphasis.]

25. Lord Walker went on (at [42]) to agree with what Toulson LJ had said about s.123(2) in the Court of Appeal in Eurosail, namely:

> "Essentially, s.123(2) requires the court to make a judgment whether it has been established that, looking at the company's assets and making proper allowance for its prospective and contingent liabilities, it cannot reasonably be expected to be able to meet those liabilities. If so, it will be deemed insolvent although it is currently able to pays its debts as they fall due. *The more distant the liabilities, the harder this will be to establish*." [my emphasis.]

26. A convenient summary of the points to emerge from the decision in Eurosail is contained in the judgment of Lewison LJ in Re Casa Estates (UK) Ltd (in liquidation) [2014] EWCA Civ 383; [2014] 2 BCLC 49 at [27]:

> "…(iii) The cash-flow test and the balance-sheet test stand side by side: para [35]. The balance-sheet test, especially when applied to contingent and prospective liabilities is not a mechanical test: para [30]. The express reference to assets and liabilities is a practical recognition that once the court has to move beyond the reasonably near future any attempt to apply a cash-flow test will become completely speculative and a comparison of present assets with present and future liabilities (discounted for contingencies and deferment) becomes the only sensible test: para [37]."

> "(iv) But it is very far from an exact test: para [37]. Whether the balance-sheet test is satisfied depends on the available evidence as to the circumstances of the particular case: para [38]. It requires the court to make a judgment whether it has been established that, looking at the company's assets and making proper allowance for its prospective and contingent liabilities, it cannot reasonably be expected to meet those liabilities. If so, it will be deemed insolvent even though it is currently able to pay its debts as they fall due: para [42]."

And at [28]:

> "In the course of his judgment in Eurosail Lord Walker approved what he described as the 'perceptive judgment' of Briggs J in Re Cheyne Finance plc [2007] EWHC 2402 (Ch), [2008] 1 BCLC 741. Two of the points that Briggs J made bear on our case:
>
> "(i) Cash-flow solvency or insolvency is not to be ascertained by a blinkered focus on debts due at the relevant date. Such an approach will in some cases fail to see that a momentary inability to pay is only the result of temporary illiquidity. In other cases it will fail to see that an endemic shortage of working capital means that a company is on any commercial view insolvent, even though it may continue to pay its debts for the next few days, weeks, or even months: para [51].
>
> "(ii) Even if a company is not cash-flow insolvent, the alternative balance-sheet test will afford a petitioner for winding up a convenient alternative means of proof of a deemed insolvency: para [57]."

27. One of the questions which Warren J had had to consider in Casa (at [70] et seq) was this: if a company has current liabilities the amount of which exceeds the value of its assets, is it necessarily deemed unable to pay its debts under s.123(2)? By 'current', in that context, the judge intended to refer to liabilities which are currently due for payment or which will fall due for payment in the reasonably near future and which are therefore relevant to the cash-flow test.

28. Mr Justice Warren rejected (at [81]) the submission that an excess of immediate liabilities over assets necessarily means that a company is insolvent, at least if expressed in that unqualified way. What still had to be asked, he said, was whether the company cannot reasonably be expected to meet its liabilities. The answer to that question, when asked in the context of immediate liabilities exceeding assets, may be clear on the facts of a particular case said the judge, and he accepted that the court might be relatively easily satisfied that the company was insolvent.

29. Importantly for present purposes, the judge said that although in the context of a winding up petition (i.e. a case where the burden of showing insolvency is on the petitioner), it is for the petitioner to establish that the case falls within s.123(2), the fact of a balance sheet deficit is, by itself, enough to raise a prima facie case of

insolvency, and there is then an evidential burden on the company to show why it can, notwithstanding its balance sheet, reasonably be expected to meet its liabilities.

30. A good part of the Respondent's argument concerning the alleged insolvency of the Applicant was based upon the responses in the Applicant's witness statements to the consequences of the Respondent unilaterally imposing a credit limit upon it in January. The Applicant is seeking an interim injunction in these proceedings prohibiting the Respondent from imposing any such credit limit. It argues that the Respondent has acted reprehensibly in a succession of aggressive tactics in an endeavour to extract itself from a set of agreements which it no longer regards as economically beneficial. It says that to impose a credit limit unilaterally, without any contractual basis for doing so, in apparent contradiction of detailed contractual provisions for standard terms of 30 days for payment of invoices and then declare that the Applicant is insolvent are unconscionable. I deal later in this judgment with the credit limit point, but it impacts upon this argument as will be seen.

31. Since s.123(2) is all about balance sheets, my attention was drawn to the Applicant's various balance sheets in the exhibits to the witness statements. Whilst they do show a negative figure I am perfectly satisfied on the evidence that this is only negative because of Directors loans which provided the original finance for setting up the Applicant. There is no prospect of those loans being called-in in the near, or even mid-term, future. If, as the Applicant is seeking to achieve, additional funding is introduced to the business from others, then the intention of the Directors is to convert their loans into equity shares.

32. Whether Clause 12.2.d. of the Manufacturing Agreement, properly interpreted, means:
(a) that the party seeking to terminate the agreement has the burden of making good its claim that the other is unable to pay its debts within the meaning of s.123; or
(b) the Respondent has only to raise a prima facie case of insolvency under s.123(2) based on the balance sheets and the Applicant has the evidential burden to show why it can be reasonably expected to meet its liabilities; or
(c) whether (as contended for by the Applicant) Clause 12.2.d and s.123(2) can only be used to terminate the contract if a court has already determined that a party is insolvent;
whichever is the correct analysis, I simply do not accept that the value of the Applicant's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

33. Accordingly, putting it at its lowest, the Applicant has persuaded me that there is an arguable case that the Manufacturing Agreement has not been effectively terminated. On the material before me I would conclude that the Respondent's attempt to terminate the Manufacturing Agreement is ineffective.

34. Consequently, at least as far as the Perkier Bars are concerned (and the NPD currently underway in respect of their further development) I proceed on the basis that the Manufacturing Agreement is still in place.

(A) Serious issue to be tried - re: an injunction prohibiting a credit limit

35. The Respondent says that the Applicant is confusing itself by mixing up the contractual term for payment of its invoices within 30 days and the implied right of a creditor to impose a credit limit if it deems that one is necessary in the circumstances. By way of an analogy Mr Brown made reference to a credit card agreement where there is a requirement for a payment to be made each month against any outstanding balance, with a quite separate credit limit above which the card company will not permit borrowing to be incurred. The suggested analogy is of course flawed because a credit card contract provides for both monthly payments and a credit limit from the very outset in its detailed terms and conditions. Therefore, Mr Brown has to argue that it must always have been an implied term that the Respondent could impose a credit limit when it chose to do so.

36. Mr Saoul for the Applicant argued that there is no possible basis for suggesting that there was such an implied term in the Manufacturing Agreement. He cited the Supreme Court's judgment in Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2015] UKSC 15. The headnote suffices:-

> *a term would be implied into a detailed commercial contract only if that were necessary to give the contract business efficacy or was so obvious that it went without saying; that the implication of a term was not critically dependent on proof of an actual intention of the parties when negotiating the contract but was concerned with what notional reasonable people, in the position of the parties at the time at which they had been contracting, would have agreed; and that it was a necessary but not sufficient condition for implying a term that it appeared fair or that the court considered that the parties would have agreed it if it had been suggested to them.*

37. There is nothing in the negotiations leading up to the Manufacturing Agreement that even hints at the possibility that anyone then negotiating it would have agreed to a term whereby Respondent could impose a credit limit as and when it wished to do so. It is quite the reverse because, as I understand it, the wholesale market in snacks is predicated on the supermarkets and retailers paying their suppliers who then pay their manufacturers. The Applicant would have had to factor-in additional funding or financing agreements had there been the potential of the Respondent imposing a credit limit in their trading arrangements in the future. Plainly therefore there is at the very least a serious issue to be tried on the imposition of a credit limit as purportedly imposed upon the Applicant by the Respondent.

(B) Serious issue to be tried/a high degree of assurance that Applicant will establish his right re: a mandatory injunction to manufacture Bites under the Manufacturing Agreement

38. There was some dispute between the parties as to the test to be applied where my decision is likely to determine the practical outcome of this case because a trial is not likely to be listed before the natural conclusion of the Manufacturing Agreement. The Respondent argued there has to be a "high degree of assurance" about the Applicant establishing its case at trial. The Respondent referred me to Nottingham Building Society v Eurodynamics [1993] FSR 468 and to Lansing Linde Ltd v Kerr [1991]

251 saying that I should have some regard to an assessment of the merits of the case to that end. The Applicant referred me to National Commercial Bank Jamaica Ltd v Olint Corpn Ltd [2009] 1 WLR 1405 @1409 paragraph 19 where Lord Hoffman now says that the prohibitory/mandatory injunction distinction was not one that Lord Diplock had in mind as significant in the American Cyanamid case,

> "*In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other: see Lord Jauncey [Ex p Factortame (No 2)]...What is true is that the features which would ordinarily justify describing an injunction as mandatory are often more likely to cause irremediable prejudice than in cases in which a defendant is merely prevented from taking or continuing with some course of action.*"

39. By the time counsel for the Respondent came to make submissions to me it was clear that he was no longer arguing that there was not a serious issue to be tried on the supply of Bites being subject to the Manufacturing Agreement.

40. I agree that I should engage in some assessment of the merits of the Applicant's case for the reasons put forward by Mr Brown for the Respondent. Having done so I do have a substantial degree of assurance that the Applicant will succeed at trial.

The inadequacy of damages as a remedy to either side

41. If the interim injunctions as sought by the Applicant (prohibiting the imposition of a credit limit and mandating the Respondent to manufacture Bites under the Manufacturing Agreement) are not granted then it will be hugely damaging to the Applicant and, contrary to the submissions made to me by the Respondent, will in my view be extraordinarily difficult to assess in an award of damages. There is no other Kruger machine in the UK and so the Applicant cannot simply find an alternative manufacturer in the marketplace. The Applicant's future funding round is dependent upon their continued growth in a volatile and competitive market. The Applicant will suffer irremediable damage which will be extremely difficult to quantify.

42. On the other hand the losses which the Respondent suggested to me it would sustain if it were reluctantly obliged to manufacture the Bites in accordance with the contract and without a credit limit were in my view exaggerated. The figures put forward of several £100k were not credible. Doing my best to assess them I am prepared to accept on current information it is possible that they might reach £90k per annum. If the Applicant was to be unsuccessful at trial it would, in my view, be capable of meeting the Respondent's losses under the necessary cross-undertaking which they are obliged to offer and have offered. I am not persuaded that a cross-undertaking would be meaningless and unenforceable. Whilst the Respondent identified its concern about the Applicant having made a small trading loss of £10,000 in the 7 months to October 2018 this does not lead to the conclusion that the cross-undertaking in damages is inadequate.

Other considerations

43. I have carefully considered the point that mandatory injunctions are relatively rare beasts in a commercial context, where damages are normally considered an adequate remedy for resolving contested issues between contracting parties.

44. However, this is a case where injunctions are required for the reasons stated. There is no alternative route the Applicant can realistically follow; there is a serious issue to be tried; I have a high degree of assurance on the merits favouring the Applicant; the cross-undertaking will provide an adequate remedy for the Respondent; and damages will not provide the Applicant with an adequate remedy. The grant of interim injunctions follows therefrom.

45. It is suggested that the court will have to endlessly supervise the compliance of the contract and the Respondent will be at constant risk of expensive litigation to resolve any alleged contempt of court for breaching the injunctions. I do not believe that to be the case. This is a relatively straightforward contract which has provision within it to resolve most issues.

46. If the inadequacy of damages to the Applicant were not reason enough for the grant of the interim injunctions in favour of the Applicant and the 'balance of convenience' needs to be considered, then that balance favours maintaining the status quo as it was prior to the Respondent refusing to manufacture Bites, imposing a credit limit and then purporting to terminate the Manufacturing Agreement.

47. I have been asked by the Applicant, and this is unopposed by the Respondent, to direct that CPR 32.12(1)(c) should not apply because of matters of commercial sensitivity in the witness statements and exhibits. I direct that the parties be required not to disclose these under CPR 31 and continue to be subject to their collateral undertakings not to do so.

48. The Applicant undertook through counsel to serve its claim, which it must now do within 28 days.

49. Since circulating this judgment in draft, a proposed Order has been submitted by the Applicant and I have received written representations thereon. In the light of those representations I have approved an Order.

50. I have also received written submissions on costs and their summary assessment. The Claimant sought £88,661.84. The Defendant will pay the Claimant's costs, which are summarily assessed at £51,843.64, within 14 days.

51. I have reduced the costs claimed by £7,000 in respect of preparing Mr Turner's witness statement (within items 11-27) – only 40 hours of an associate's time and 15 hours of a partner were a proportionate. I have also disallowed £400 from items 41 & 47; £1,220 from items 48 & 49; £330 from item 31; £1,010 from items 27 & 33; and £4,375 time costs for travel. This reduces the claimed solicitor time costs of £53,667 to £39,332. I consider that the rates which have been claimed for the litigators involved are 15% higher than is proportionate and should be allowed in light of the published rates and inflation. This results in allowable solicitor time costs of £33,432.20, to which I add £1,450 for time costs of travel (£100 per hour). I consider counsel's fees at £19,000 to be disproportionate and allow only £15,500. There were court fees of £783 and travelling expenses of £678.44. VAT will be reclaimed by the

Applicant and therefore will not be added to the costs order. The sum is therefore: £33,432.20 + £1,450 + £15,500 + £783 + £678.44 = £51,843.64.

52. Permission to appeal is refused. A separate Form N460 provides my reasons.