



Neutral Citation Number: [2021] EWHC 1775 (Ch)

Case No: G90BS302

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BRISTOL**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 29/06/2021

Before :

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

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Between :

**THE OFFICIAL RECEIVER**  
**- and -**  
**DAVID PHILIP ARRON**

**Claimant**

**Defendant**

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**Womble Bond Dickinson (UK) Ltd for the Claimant**  
**The Defendant in person**

Judgment on costs, on the basis of written submissions

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**HHJ Paul Matthews :**

1. On 14 June 2021 I handed down judgment in this claim under the Company Directors Disqualification Act 1986. I held that the defendant's conduct as a director of Mid Cornwall Metals Ltd made him unfit to be concerned in the management of the company, and disqualified him for four years: see [2021] EWHC 1587 (Ch). This short judgment is concerned with the costs of the claim, following written submissions supplied to me on behalf of the claimant and the defendant.
2. Under the general law, costs are in the discretion of the court (CPR rule 44.2(1)), but if the court decides to make an order about costs, the general rule is that the unsuccessful party in the proceedings pays the costs of the successful party: CPR rule 44.2(2)(a). However, the court may make a different order: CPR rule 44.2(2)(b). In deciding whether to make an order and if so what, the court will have regard to all the circumstances, including conduct of all the parties and any admissible offer to settle the case (not under CPR part 36) which is drawn to the court's attention: CPR rule 44.2(4).
3. In my judgment it is appropriate to make a costs order in the present case. Overall, the claimant is clearly the successful party. Is there any reason why the general rule should not apply in this case? The defendant has not made a specific written costs submission, but in an email to the court following circulation of my draft judgment to the parties, but before hand-down of the final version, he said that he had previously been "offering an undertaking where the offer was a no compensation order and each parties absorb their own cost." However he has not produced any document (whether correspondence or otherwise) to substantiate this statement.
4. The claimant contests this version of events, saying that there was no offer of a disqualification undertaking from the defendant. Instead, there was a proposal that the proceedings be discontinued with no order as to costs. Moreover, there was no question of a compensation order being sought by the claimant. In the trial bundle there are letters from the claimant to the defendant in July 2018 in which the claimant invited the defendant to offer a disqualification undertaking (for less than the four years that I have found to be appropriate). This was at a time when the proceedings had not yet been issued, and the costs would have been much lower. But the defendant obviously did not accept this offer, and proceedings were thereafter issued. It was only three weeks before trial that the defendant's solicitors suggested a discontinuance of proceedings, but even then on the basis of no order as to costs (which is not the usual order on a discontinuance). I have been shown a further letter from the claimant's solicitors to the defendant's solicitors dated 18 May 2021 in which this offer was refused. A counter-offer was made on behalf of the claimant, for the defendant to offer a written disqualification undertaking (a copy of which was enclosed) for the period of four years. This appears not to have been taken up.
5. In my judgment, if the defendant had been offering an undertaking at an early stage, there would have been some evidence of this which could have been placed before me. And I do not understand why the claimant would go on and issue proceedings if the defendant was willing to give the undertaking which he had been invited to give in July 2018. This suggests to me that the defendant is simply mistaken. But, even if the defendant *had* been offering such an undertaking, it was on terms (as to costs) which were unacceptable to the claimant, and in the circumstances the claimant was entitled

to go on with the claim. Accordingly, I can find no good reason to depart from the general costs rule, that the unsuccessful party (here, the defendant) shall pay the costs of the successful (here, the claimant), to be subject to detailed assessment if not agreed between them.

6. CPR rule 44(8) provides that, where a court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of those costs, unless there is good reason not to do so. I can see no such good reason, and the defendant did not suggest that there was one, except his impecuniosity. That is not a good reason. The claimant accordingly asks for an order for a payment on account of such costs pending agreement or detailed assessment of them. I have been shown a further letter dated 20 May 2021 from the claimant's solicitors to the defendant personally (his solicitors having by this stage ceased to act for him), stating that the estimated costs of the claimant up to 20 May 2021 were £23,488. The claimant asks for the sum of £17,500 as a payment on account. This equates to just under 75% of the estimate.
7. I remind myself that in *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm), Christopher Clarke LJ said:

“22. It is clear that the question, at any rate now, is what is a ‘reasonable sum on account of costs’...

23. What is a reasonable amount will depend on the circumstances, the chief of which is that there will, by definition, have been no detailed assessment and thus an element of uncertainty, the extent of which may differ widely from case to case as to what will be allowed on detailed assessment. Any sum will have to be an estimate. A reasonable sum would often be one that was an estimate of the likely level of recovery subject, as the costs claimants accept, to an appropriate margin to allow for error in the estimation. This can be done by taking the lowest figure in a likely range or making a deduction from a single estimated figure or perhaps from the lowest figure in the range if the range itself is not very broad.”
8. In the present case, the estimate of costs is just that, a shortly stated estimate, with minimal breakdown. It is not even a statement of costs of the kind used for the purpose of summary assessment, let alone the kind of detailed bill that will be necessary on a detailed assessment. I have not been referred to any costs budgeting, so I am not able to use that as a guide. Whilst the defendant claims that he cannot afford to pay the claimant's costs in any event, and therefore the question may turn out to be academic, I do not know that now, and I must therefore make the best attempt I can to decide what is a “reasonable sum on account of costs”. To my mind, the estimate seems a little on the high side. I know that judges who are no longer in practice can lose touch with how much litigation costs, but I have seen other cases, not dissimilar, with rather lower figures. I therefore think that I should build in a greater margin than 25% to allow for the assessment process. In my judgment, a reasonable sum would be £15,000, which is slightly under 64% of the estimate. I will make the order accordingly.