

Neutral Citation Number: [2024] EWHC 2983 (Ch)

Case No: CR-2024-000236

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES**  
**INSOLVENCY & COMPANIES LIST**  
**In the matter of 36 Bourne Street Limited**  
**and in the matter of the Companies Act 2006**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane, London  
EC4A 1NL

Date of hearing: 6 November 2024

**Before:**

**INSOLVENCY AND COMPANIES COURT JUDGE BARBER**

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**Between:**

<b>JOANNE LAURA BRIERLEY</b>	<b><u>Petitioner</u></b>
<b>- and -</b>	
<b>(1) CHRISTOPHER HOWE</b>	<b><u>Respondents</u></b>
<b>(2) 36 BOURNE STREET LIMITED</b>	

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**ANDREW SUTCLIFFE, KC & GEORGE EYRE (C)** (instructed by **Hewlett Swanson Ltd**) for the **Petitioner**

**NIGEL DOUGHERTY (C)** (instructed by **Cooley (UK) LLP**) for the **Respondents**

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**APPROVED JUDGMENT**

**(As approved by ICC Judge Barber  
on 21.11.2024)**

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**ICC JUDGE BARBER :**

1. Following the handing down of judgment this morning on the strike out application brought by the first respondent, it remains for me to consider the issue of costs.
2. Dealing first with the principle of costs: in my judgment, the first respondent was plainly the successful party in the context of this application and the general rule set out in CPR 44.2(2)(a) should apply. No good reason has been demonstrated for an alternative order to be made, having regard to all the circumstances of this case including, but not limited to, the various factors set out in CPR 44.2. In short, the unsuccessful party should be ordered to pay the successful party's costs of and occasioned by the strike out application.
3. I have been invited summarily to assess those costs. Mr Sutcliffe has made clear that he is not in principle opposed to a summary assessment of costs and has addressed me on quantum. He has asked, however, that the issue of when such costs should be paid be deferred to a later hearing.
4. On the issue of whether the costs should be summarily assessed or the subject of detailed assessment: in my judgment it would be most cost-effective and thereby further the overriding objective for the costs to be summarily assessed. Leaving aside today's handing down hearing, total hearing time amounted to approximately one day, which is comfortably within conventional margins for such purposes.
5. I turn next to the question of quantum.
6. I heard detailed submissions on quantum. One issue raised was whether the first respondent's solicitors should be confined to London grade 2 rather than London grade 1. In my judgment, this highly technical strike out application does warrant

London grade 1 treatment, even if other aspects of the case, as the matter progresses on to trial, may warrant only London grade 2. Those other aspects, of course, will be the subject of submissions on another day.

7. Mr Sutcliffe also objected to the first respondent's counsel charging more than Mr Sutcliffe and his junior put together. I do take that into account. It does seem to me, however, that the court must also take into account the fact that the barrister in question, Mr Dougherty, is a specialist company lawyer. This was, as I have said, a highly technical strike out application, which is bound to have an impact on the degree of specialism in a barrister reasonably required by the first respondent in pursuing it.
8. In the interests of brevity, I do not propose to address, on a line-by-line basis, the other submissions made on quantum. I confirm however that I do take all such submissions into account. Having done so, I conclude that the first respondent's costs of and occasioned by the strike out application should be summarily assessed in the sum of £30,000 plus VAT. I shall so order.
9. I turn next to consider the issue which has taken up most of today's extended hearing. Mr Sutcliffe has invited the court to defer the question of when the petitioner should pay the strike out costs to a later hearing. Mr Dougherty opposes this suggestion.
10. Mr Sutcliffe maintains that a costs order imposing a conventional payment deadline today would render it impossible for the petitioner to continue with her residual claim against the first respondent. The petitioner has not, however, prepared in advance of today, still less filed and served, any evidence in support of that contention, notwithstanding the fact that the hearings on the strike out took place three months ago.

11. In my judgment, it must (or certainly should) have been apparent to the petitioner and her legal team that one possible outcome of the strike out application would be that the petitioner would lose and face a costs order. Had the petitioner wished to prepare evidence of means for the court to take into account on the issue of costs, she has already had plenty of time in which to do so. To delay final disposal of any aspect of this application in the manner proposed by the petitioner would, in my judgment, be contrary to the overriding objective.
  
12. Mr Sutcliffe maintained that the petitioner only realised on receipt of the draft judgment on Monday morning that she had lost. He argued that she has had insufficient time since that point in which to prepare evidence of means for the purposes of an application for deferred payment. In my judgment, if the consequences of losing were quite so impactful as is now being suggested (and in this regard I note that the parties exchanged schedules of costs in July and so have known of the quantum involved for some time), the petitioner ought reasonably to have prepared evidence of her means in advance of handing down, if she wished, in the event of losing, to seek a deferred payment order. Preparation of such evidence, about her own affairs, would not have been a particularly onerous task. It does seem to me that it is not good enough for the petitioner to wait until the judgment is circulated, in the hope that it may be a judgment in her favour, before taking any other steps of the nature now proposed.
  
13. The court has been taken to a variety of authorities this morning, including *Hussain and Anor v Ahmed* [2021] EWHC 2213 (Ch) (in particular the guidance given at [167]), *Argus Media Limited v Halim* [2019] EWHC 215 (QB) (in particular at [33], [35] and [36]) and *Crystal Decisions (UK) Limited* [2008] EWCA Civ 848 (in

particular at [18]). The court has also been taken to paragraph 20 of the Guide to the Summary Assessment of Costs, 2021 edition. I am grateful to Counsel for their research and take all such authorities and guidance into account.

14. The caselaw and guidance to which I have been referred, however, does not, in my judgment, lead inexorably to the conclusion that no deadline can be set for payment of the costs ordered today. In this regard Mr Dougherty has very helpfully suggested a mechanism (or ‘rider’, as he put it) which may be included in the order to assist. The ‘rider’ proposed is that if the petitioner issues a fully evidenced application (‘the Application’) seeking a stay of the costs order (and/or an extension of the deadline for payment) within a given (fairly short) timeframe, the deadline for payment of the costs in question shall be extended until final disposal of the Application or further order. In my judgment this ‘rider’ provides more than adequate protection to the petitioner in context.
15. I reject Mr Sutcliffe’s alternative suggestion that the question of when the petitioner should pay the strike out costs be put off to a CCMC next year. That is far too late. Further costs will inevitably have been run up preparing for the CCMC in the meantime. Moreover, as rightly observed by Mr Dougherty, any deferral of costs liability ordered by the court on grounds of impecuniosity may well inform the approach that the court takes at the CCMC itself, on costs management, on directions through to trial and on the issues to be determined at trial. The outcome of any deferral application needs to be known in advance of the CCMC.
16. Mr Dougherty argued that the suggestion that the petitioner should be kept immune from any costs orders ahead of trial, regardless of the litigation decisions which the petitioner and her experienced legal team may take along the way, is deeply troubling

in the current context. Any such ‘free pass’, as he put it, raised Article 6 issues of its own, potentially putting the first respondent under undue pressure to settle and thereby denying him access to justice.

17. I see the force of that contention. I would add that the petitioner’s stance on costs appears to be premised on the expectation of a likely win and significant recoveries at trial. The issues raised by the (remainder of the) petition, the points of defence and the points of reply, however, are legally and factually complex. There is certainly no guarantee that the petitioner will win and indeed an appreciable risk that she will not. It follows that, for the purposes of determining the matters before the court today, the court cannot take the petitioner’s ultimate success at trial as a ‘given’ or even, from what has been seen to date in the way of statements of case, as more likely than not.
18. What is asked of the court today must also be seen in context. The petitioner has retained a large legal team throughout and, as part of that, has instructed both a senior King’s Counsel and a junior counsel to appear, together, on her behalf at the hearings of the strike out. She has also instructed a firm of solicitors to have conduct of the claim generally. From the schedule of costs filed on the petitioner’s behalf, it is clear that her own legal team’s fees for the strike out came to £34,000-odd inclusive of VAT, including counsel’s fees for the hearing of over £17,000. This compared to the first respondent’s costs schedule of £45,000 inclusive of VAT, including a £22,000 brief fee.
19. Mr Sutcliffe was at pains to stress that the petitioner’s legal team are operating on a conditional fee basis. That may be so, but the petitioner will expect her own legal team to be paid by the first respondent in the event that she is successful at trial.

20. This is not a case where the petitioner has been bounced into litigation and has had no option but to respond to it. It was the petitioner's choice to issue these s 994 proceedings and it was her choice to include a wide range of allegations and issues, including, as I have found, certain allegations which were liable to be struck out.
21. The petitioner was also warned of the need to keep within legitimate bounds of the s 994 jurisdiction by the first respondent's solicitors over a year prior to presentation of the petition. As made clear at paragraphs 237 and 238 of my main judgment, the petitioner was warned by letters dating back to as early as 17 February 2023 of the need to identify relevant conduct of the company's affairs for the purposes of a section 994 petition. That warning appears to have been largely ignored, the petition then having been presented in January of this year in a form which, as I have found, included purported s 994 allegations which were not justiciable under s 994.
22. The strike out application itself was issued in April 2024 and not heard until July 2024, allowing the petitioner a further three months between receipt of the strike out application and the hearing itself, in which to review her position. The first hearing of the strike out application on 1 July was then adjourned, part-heard, to 19 July, allowing a further two weeks or more following exchange of skeleton arguments and close of the first respondents' oral submissions on 1 July, for further reflection. Yet still the petitioner's stance at the resumed hearing on 19 July was to defend the petition as it stood and to maintain that the strike out application was misconceived.
23. As is clear from my main judgment, the petitioner (through her legal team) adopted a somewhat blinkered, defiant and unrealistic approach to the strike out application. The petitioner's legal team also prolonged the time that final disposal of the application took, by seeking to bolster the petitioner's position with passages from

authorities which were partially quoted or quoted out of context. This lengthened and complicated the process of final disposal unnecessarily, as each such quote then had to be the subject of submissions and considered in its full form and proper context, before being rejected for the most part as any realistic plank in support of the argument in favour of which it was put forward.

24. The defiant, unrealistic stance adopted by the petitioner on the strike out application is also not a 'one-off'. It is part of an emerging pattern of 'taking things to the wire' already demonstrated in the section 306 proceedings which preceded this application.
25. In the section 306 proceedings, the petitioner chose to assume the risk of an adverse costs order, electing until the eleventh hour to have matters determined by the court, when she could and ought reasonably to have engaged more constructively at a much earlier stage. The costs of the section 306 proceedings were entirely avoidable. All that the petitioner had to do was to show up as a member to form a quorum at a members' meeting. That is all. Instead, as I have indicated, until the eleventh hour she contested the section 306 proceedings, generating costs which, in the event, she was ordered to pay, in part on the standard basis and in part on the indemnity basis.
26. Similarly, in the context of the present strike out application, having been warned pre-presentation of the need to keep her proposed s 994 claim within legitimate s 994 bounds, the petitioner chose not to. When the strike out was issued, the petitioner then chose to fight it, rather than conceding it without the expense of hearings and simply removing E1 and E2 voluntarily, as she could have done at minimal cost.
27. Against that backdrop, I reject the suggestion that making a costs order now, with a deadline imposed for payment, would not be just. The petitioner, advised and



represented by a large legal team including senior leading counsel, has made litigation choices and must now face the consequences.

28. In my judgment, there is no good reason in the circumstances of this case why the first respondent should be kept out of pocket in respect of costs which he has very reasonably incurred in a process designed to keep the s 994 petition within legitimate bounds. He is to be praised for his efforts to do so, rather than castigated, as the petitioner's legal team would have it.
29. For all these reasons, subject to a rider of the sort helpfully proposed by Mr Dougherty, I shall order that the petitioner do pay the first respondents' costs of and occasioned by the strike out application, summarily assessed in the sum of £30,000 plus VAT, within 21 days. The order will be subject to a rider that will enable the petitioner to make an application within a given window and, in the event that she does so, will extend the deadline for payment of the costs order until final determination of her application or further order in the meantime. I shall so order. I shall also make the other orders and directions set out in the draft prepared by Mr Dougherty ahead of this hearing.

**As approved,**

**ICC Judge Barber**

**21 November 2024**

**(For proceedings, see separate transcript)**

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