

Neutral Claim No. CL-2019-000069

Citation Number: [2019] EWHC 1641 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice. Rolls Building
Fetter Lane, London, EC4A 1NL
Date of Judgment: Friday, 28 June 2019

BEFORE:

MR ADRIAN BELTRAMI QC
Sitting as a Judge of the High Court

BETWEEN:

ABBOTSWOOD SHIPPING CORPORATION
(a company incorporated under the laws of Liberia)

Claimant

and

AIR PACIFIC LIMITED
(a company incorporated under the laws of Fiji and trading as Fiji Airways)

Defendant

Bajul Shah (instructed by Thomas Miller Law) appeared on behalf of the Claimant
Steven Thompson QC (instructed by Bird & Bird LLP) appeared on behalf of the Defendant

Hearing date: Friday, 21 June 2019

Judgment

ADRIAN BELTRAMI QC:

1. The Claimant is a company incorporated in Liberia. The Defendant is a company incorporated in Fiji, which carries on business as an international airline under the trading name “Fiji Airways”. The Claim Form erroneously names the Defendant as “Fiji Airways Limited” rather than “Air Pacific Limited” but the pleadings and all subsequent documents have adopted the correct name, which I have accordingly used in the heading of this Judgment. To avoid confusion, the Claim Form ought to be corrected at a convenient point.
2. By application notice dated 6 June 2019, the Defendant sought, inter alia, an order under CPR 25.12 and CPR 25.13(2)(a) and/or (c) that the Claimant provide security for the Defendant’s costs of defending the claim. The amount claimed was £134,694.84 but I was provided with up to date figures at the hearing. The application was supported by the witness statement of Sophie Jane Eyre dated 5 June 2019.
3. The application was heard at the first CMC, at which I also ordered, by agreement of the parties, that the case be allocated to the Shorter Trials Scheme. I was provided at the beginning of the hearing with the witness statement of Robert Alexander McCunn, dated 18 June 2019, in opposition to the application. Because of the shortage of time, I was unable to give Judgment orally.

Background

4. The claim concerns two cash security deposits provided by the Defendant as the lessee of two Boeing 747-400 aircraft, msn 24062 and msn 24064, each with four Pratt & Whitney jet engines. The aircraft were initially leased from Singapore Airlines Ltd pursuant to lease agreements dated 11 December 2002 in substantially identical terms. The cash security deposits, paid under the leases, totalled US\$1,820,000.
5. On 2 December 2004, the aircraft were sold to AP62 Ltd and AP64 Ltd respectively and the leases were novated in favour of the new owners (referred to hereafter as the **Lessors**). Following extension and further agreements, msn 24062 was redelivered in

July 2013 and msn 24064 in December 2013. A video boroscope inspection undertaken at the time of redelivery revealed a crack on one of the compressor blades in one of the engines on msn 24064. The Claimant contends that this constituted an Event of Default under the leases, whereas it is the Defendant's case that any damage was within serviceable limits, that there was no Event of Default and in any event that the execution by each of the Lessors of a Return Acceptance Receipt/Certificate constituted conclusive proof of acceptable redelivery, creating in effect a contractual estoppel.

6. In May 2015, the Defendants commenced two sets of ICC arbitration proceedings, claiming the return of the security deposits from the Lessors. However, on 31 July 2015, the Lessors were struck off the Cayman Islands register of companies for the non-payment of registry fees.

7. These proceedings were commenced on 4 February 2019. The Claimant seeks the following relief, as set out in the Claim Form:

“a. That, pursuant to Sections 1 and 8 of the Contracts (Rights of Third Parties) Act 1999 and/or the term of the relevant contracts the Claimant may in its own right enforce the terms of the two aircraft lease agreements dated 2 December 2002 [... as subsequently amended...]

b. That the terms of the Leases which the Claimant is entitled to enforce in its own right include Clauses 7, 17.1, 21, 26.2.2 and 26.3.1.

c. Consequent on the declarations under a. and b. above as to the accounting position between the Claimant and Defendant and as to what sums, if any, are due from the Claimant to the Defendant.”

8. As set out in the Particulars of Claim, the Claimant contends that it was the sole lender to the Lessors, having bought out previous lenders in October 2008. Although not entirely clear from the Particulars of Claim, my understanding is that the Claimant claims to hold the security deposits pursuant to a form of security assignment granted by the Lessors in favour of the original lenders and then transferred on some basis to

it. As a “Financing Party” under the leases, it also claims to be entitled to an indemnity from the Defendant pursuant to clause 17.1. It contends that “*The Lessors and the Claimant*” agreed to sell the four engines on msn 24064 to Pratt and Whitney but that the cracked engine then had to be sold elsewhere for a lesser price. The pleaded case arrives at the following conclusion, at [57]:

“In the premises set out in paragraphs 36 to 52 above Events of Default had occurred as set out above which entitled the Lessor and the Claimant pursuant to Clause 7.2.1 to set-off or apply all or part of the Security Deposit in or towards the payment or discharge of any matured obligation owed by the Lessee, namely the obligation to compensate the Lessor and the Claimant for the reduced value of Engine P727381CN. The reduction in value of Engine P727381CN was a loss, damage or injury arising directly or indirectly out of redelivery of the Aircraft within Clause 17.1 of the Lease which entitled the Claimant to claim indemnity from the Defendant.”

9. Under the heading “*The Accounting Position between Claimant and Defendant*”, the Claimant calculates the “*Total of loss and prejudice to Claimant*” at US\$1,470,181.18, which then falls to be set off against the value of the security deposits, leaving a balance of “*surplus funds*” of US\$349,818.82.
10. By its Defence, the Defendant contends, as I have indicated above, that there was no Event of Default and that, in any event, any complaint about the redelivery was contractually precluded. So far as the legal position of the Claimant is concerned (as to which, it seems, the Defendant has little real information), its primary case is that the Claimant can be in no better position than the Lessors, who had been obliged, on the Defendant’s case, to return the security deposits within 30 days of redelivery. The Defendant also advances a Counterclaim in which it pursues three causes of action:
 - a. A claim for damages against the Claimant for inducing a breach of contract on the part of the Lessors, the relevant breach being the failure to return the security deposits.
 - b. A claim in unjust enrichment.

c. A claim for the return of the monies represented by the security deposits pursuant to sections 423-425 of the Insolvency Act 1986.

11. The Claimant has served a Reply and Defence to Counterclaim. At Reply [5], it is contended that the security deposits were in fact held on trust by a security trustee on behalf of the original lenders and so (it may be inferred) now on behalf of the Claimant, although both the basis and intended significance of this allegation are not to my mind clearly articulated. The various causes of action in the Counterclaim are denied principally because, as alleged, the sums in questions were in fact lawfully withheld.

12. By letters dated 7 May and 15 May 2019, the Defendant by its solicitors, Bird & Bird LLP, demanded from the Claimant payment of the “*surplus*” of US\$349,818.82 in respect of which no entitlement was alleged by the Claimant. Regrettably, the Claimant did not immediately comply, even though there could be no reason to justify its continued retention of this sum. Only after the Defendant issued an application was payment belatedly made, and I ordered costs in favour of the Defendant in that respect.

The application for security

13. Pursuant to CPR 25.13(1):

“The court may make an order for security for costs under rule 25.12 if:

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) (i) one or more of the conditions in paragraph (2) applies... ”

14. The conditions in paragraph (2) are, so far as material:

“(a) the claimant is:

(i) resident out of the jurisdiction; but

(ii) *not resident in a Brussels Contracting State, a State bound by the Lugano Convention, a State bound by the 2005 Hague Convention or a Regulation State as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982...*

(c) *the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;"*

15. There are, accordingly, at least in theory, three questions to consider: (i) whether one or more of the paragraph (2) conditions is established; (ii) whether in all the circumstances it is just to make the order; and (iii) whether the court should make the order a matter of general discretion. However, there is no obvious reason to think that, at least in most cases, the court would not make an order for security if satisfied that it was just to do so. Hence, any final residual discretion is unlikely to involve a separate consideration.

16. So far as the paragraph (2) conditions are concerned, there can be no doubt about condition (2)(a). The Claimant is incorporated in Liberia. There has been no suggestion, should it matter, that its central management and control might be elsewhere. Indeed, Mr Shah did not seek to argue that the condition was not satisfied. I find that the condition is plainly met.

17. Turning now to condition 2(c), the applicable principles were conveniently summarised by Akenhead J in *Phaestos Ltd v Ho* [2012] EWHC 662 (TCC) at [71]:

"(a) As a threshold requirement, the Defendants must establish that there is reason to believe that the Claimants will be unable to meet any costs order: see CPR Part 25.13(2)(c). Thus, it is not enough for the Defendants to show that the Claimants might not be able to repay. More must be done, namely justification for a reason to believe that the Claimants will not be able to pay. In that regard:

(i). The Defendants do not need to demonstrate on a balance of probabilities that the Claimants will not be able to satisfy any costs order: see Jirehouse v Beller [2009] 1 WLR 751 at [26]. However, there must be evidence that the company "will be unable to pay", which is more than mere doubt or concern about the future ability to pay: see Re Unisoft Group Limited [1993] BCLC 532 per Sir Donald Nicholls VC at 534e-i, as followed by Jirehouse at [24]. As stated by Sir Donald Nicholls VC in Unisoft, the test is not "watered down" by the presence of the wording "reason to believe".

(ii) Similarly, in Texuna International Limited v Cairn Energy plc [2004] EWHC 1102 Gross J stated at [10]: "I emphasise that the inquiry is whether the Claimant "will be unable" to pay the Defendant's costs if ordered to do so – not whether it might be unable to pay them."

(iii) The burden is upon the Defendants. It is not incumbent upon the Claimants to prove that they have the means to pay: see Golden Grove Estates v Chancerygate Asset Management [2007] EWHC 968 per Lindsay J at [35].

(iv) However, if legitimate concerns about the Claimants financial position are raised, if the Claimants choose to provide no or incomplete information in response, that in itself can lead to a court reaching the belief that the Claimants are unable to pay. In Mbasago v Logo Limited [2006] EWCA Civ 608, Lord Justice Auld stated (at paragraph 12) that “where it arises as a result of the party against whom the order is sought either providing unsatisfactory financial information as to his or its affairs, or as in this case none at all, it is not a big step for the court to take to conclude that there is reason for such belief”.

18. On the latter point about the provision of unsatisfactory financial information, I was directed also to the observations of Sales LJ, delivering the Judgment of the court in *Sarpd Oil International Ltd v Addax Energy SA* [2016] EWCA Civ 120 at [19]:

“Mr Nolan may be right to say that [CPR Part 1.3](#) does not require a respondent voluntarily to fill gaps in an applicant's evidence in order to assist an applicant to discharge a burden of proof. But even if deliberate reticence on the part of a respondent is not a breach of [CPR Part 1.3](#) a court can and should take account of deliberate reticence as part of the overall picture. Any evaluation has to be made on the totality of the evidence before the court; part of that totality is the absence of relevant evidence from the only party who is able to provide it. If, therefore, there were to be a practice of the Commercial Court (as to which we cannot express a view from our own experience) that security for costs will often be granted against a foreign company who is not obliged to publish accounts, has no discernible assets and declines to reveal anything about its financial position, our view is that the practice is a sound one and, as Lewison LJ noted, it is an important point of practice which should either be upheld or rejected at appellate level. We would uphold it.”

19. Ms Eyre explains in her witness statement that she has carried out a search to see if any financial information on the Claimant is available online on the Liberian Corporate Registry. There is no public search facility available on this registry and she has therefore been unable to obtain any financial or corporate documentation. The Defendant knows only that the Claimant has (or, perhaps more accurately, has some control over) a bank account with BankMed (Suisse) from which the surplus balance was remitted. It is not known where this account is held. Given the absence of public information, Ms Eyre requested details from the Claimant, by letters addressed to their solicitors, Thomas Miller Law. Letters were sent dated 7 May, 15 May and 22 May 2019 seeking proposals on what assets would be provided in the jurisdiction as security. No response was received to any of these requests. In those circumstances, and in line with the above authorities, I am invited to infer that there is reason to

believe that the Claimant will be unable to pay the Defendant's costs if ordered to do so.

20. On the Claimant's behalf, Mr Shah did not seek to excuse or justify the failure to provide any response to the Defendant's letters. He emphasised, instead, the need to consider the matter "*on the totality of the evidence before the court.*" To this end, he advanced the following as "*evidence*" that the Claimant "*can pay*":

- a. That the Claimant brought these proceedings which seek, amongst other matters, an account of what might be due from the Claimant to the Defendant.
- b. That the Claimant paid the "*surplus*" balance.
- c. That there is no suggestion that the Claimant failed to pay any sums that might have been due under the leases.
- d. That the Claimant has not sought to resist the application on the ground that an order would stifle the claim.

21. In my judgment, condition 2(c) is amply satisfied on the facts presented to me. There is no available evidence of the Claimant's financial position, or even the nature of its business. The failure to respond to the Defendant's three letters is striking. That is sufficient to establish the necessary reason to believe but, even then, there was the opportunity to assist the court through Mr McCunn's witness statement. That opportunity was not taken and so the court has been presented with a deafening silence on the Claimant's part as to its true financial position and its ability to meet a costs order. As to the points raised by Mr Shah, which I regard as argument rather than evidence: (a) whilst it is correct that the accounting sought in the Claim Form allows for the possibility of a finding that sums are due from the Claimant to the Defendant, this does not in any way address the question at issue, namely whether there is reason to believe that the Claimant will be unable to meet a costs order; (b) nor does the (late) transfer by the Claimant of the surplus balance; (c) as Mr Shah was unable to say whether the Claimant had in fact been obliged to make any payment under the leases, the absence of a suggestion that it had failed to make payment does not take the argument any further; and (d) I do not consider it safe to draw any inference as to why the Claimant did not contend that an order for security would stifle the claim and so I do not regard this as a relevant consideration on this point.

22. The Defendant, therefore, has established that both conditions 2(a) and 2(c) are satisfied, and so I turn to consider whether it is just to make an order for security. On that question, the starting point is the guidance of Bingham LJ in *B J Crabtree (Insulation) Ltd v GPT Communication Systems Ltd (Crabtree)* (1990) 59 BLR 43 at p 49:

"... the question whether any order should be made is a discretionary question... to be exercised in the interests of justice having regard to the peculiar features of the

case before the court. It cannot be too firmly emphasised that there can be no rule of thumb as to the grant or refusal of an order for security ...”

23. In inviting me to have regard to all the circumstances of the case, Mr Thompson emphasised that the Defendant was facing a substantial claim brought by an impecunious Liberian Claimant and therefore was at substantial risk as to costs in the event of a Judgment in its favour. He pointed out that the Claimant had chosen to sue his client in London but had at the same time refused to give any details of its financial position or to bring assets into the jurisdiction for the purpose of security. Further, I should take into account (as a point supporting the application) the fact that there was no suggestion that an order would stifle the claim.
24. Whilst accepting the need to consider all the circumstances, Mr Shah submitted that the critical, and in this case determinative, circumstance was the substantial overlap between the claim and the counterclaim, with the consequence that an order for security would have the result in practice of securing the costs of the counterclaim.
25. In *Crabtree* itself, the court was faced with an application for security in a case where there was considerable overlap between claim and counterclaim. Bingham LJ said the following, at pp 52-53:

“It is, however, necessary, as I think, to consider what the effect of an order for security in this case would be if security were not given. It would have the effect, as the defendants acknowledge, of preventing the plaintiffs pursuing their claim. It would, however, leave the defendants free to pursue their counterclaim. The plaintiffs could then defend themselves against the counterclaim although their own claim was stayed. It seems quite clear – and, indeed, was not I think in controversy – that in the course of defending the counterclaim all the same matters would be canvassed as would be canvassed if the plaintiffs were to pursue their claim, but on that basis they would defend the claim and advance their own in a somewhat hobbled manner, and would be conducting the litigation (to change the metaphor) with one hand tied behind their back. I have to say that that does not appeal to me on the facts of this case as a just or attractive way to oblige a party to conduct its litigation.

Mr Phillips for the defendants submits there would really be no problem because, if the defendants failed in their counterclaim and the plaintiffs' case contrary to the counterclaim effectively succeeded, then the stay could be lifted and the plaintiffs could be given judgment. But on that assumption one is bound to ask what would be the point of making the order at all except to give the defendants a tactical advantage in the litigation.

One comes back, I think, at the end of the day to the reflection that this is a rule intended to give a measure of protection to a defendant who is put to the cost of defending himself against a claim made by an impecunious corporate plaintiff. It may in some cases be fair and just to make such an order even though the defendant is himself counterclaiming, but I am persuaded that it would be wrong to do so here because the costs that these defendants are incurring to defend themselves may

equally, and perhaps preferably, be regarded as costs necessary to prosecute their counterclaim ... The fact that the plaintiffs are plaintiffs and the defendants are counterclaiming defendants instead of the other way round appears on the facts here to be very largely a matter of chance."

26. I suggested to Mr Thompson that there were two aspects to this analysis. The first is a practical one, arising out of a sequence in which an order for security is made and is not complied with, the claimant is debarred from pursuing the claim, yet the counterclaim continues. The result would be a peculiar, and potentially unfair, trial process. Such a circumstance may or may not arise on the facts of any particular case. There may be no prospect that an order will not be complied with. Alternatively, it may be that a defendant can obviate the problem by giving an undertaking that the counterclaim will not be pursued if the claimant is debarred from making the claim. The second aspect is more a matter of principle, namely that a rule which is intended to give a measure of protection to a defendant who is put to the cost of defending himself against a claim by an impecunious corporate claimant may not be apposite if the true position is that the costs are in fact just as much attributable to the pursuit of a counterclaim.

27. This point of principle, sometimes referred to as "*the Crabtree principle*" has been applied in subsequent cases. In *Dumrul v Standard Chartered Bank* [2010] EWHC 2625 (Comm). Hamblen J summarised the position as follows, at [5]

*"As a general rule, the Court will not exercise its discretion under [CPR Part 25](#) to make an order for security of the costs of a claim if the same issues arise on the claim and counterclaim and the costs incurred in defending that claim would also be incurred in prosecuting the counterclaim — see *BJ Crabtree v GPT Communication Systems* (1990) 59 BLR 43 ("*the Crabtree principle*")."*

28. In *Anglo Irish Asset Finance plc v Flood* [2011] EWCA Civ 799, Moore-Bick LJ described this at [18] as "*a fair summary of the position*", though went on to observe the irony that Bingham LJ had gone out of his way to emphasise that there was no rule of thumb. He then reformulated the same approach, at [20]:

"If the claim and counterclaim raise the same issues it may well be a matter of chance which party is the claimant and which a counterclaiming defendant and in such a case it will not usually be just to make an order for security for costs in favour of the defendant, although the court must always have regard to the particular circumstances of the case."

29. I accept, as Mr Thompson submitted, that these are not statements of an invariable rule, as it is necessary to consider all the (relevant) circumstances. But that does not mean that all the circumstances carry equal weight. It is necessary in each case to undertake an evaluation of the pleadings in order to determine whether the claim and

counterclaim do raise the same issues. If they do, then in accordance with the principle identified in *Crabtree*, that is likely to be a very significant, and in many cases probably a determinative factor, albeit that any other considerations will also have to be taken into account. Mr Thompson further referred me to *Ardila Investments NV v ENRC NV* [2015] EWHC 1667 (Comm) [2015] 2 BCLC 560, where Simon J said at [69], in a case where the claims overlapped, that he would have concluded that each side should give security, and so ordered security in favour of the only party which had sought the assistance of the court. But I do not detect any difference of principle in that case, which appears to have turned on the facts. Indeed, at [60], Simon J referred to the “*Crabtree principle*”, which he described as a “*general rule*”.

30. Following the consistent approach of the courts, as summarised above, my first task is therefore to determine whether the same issues arise on the claim and counterclaim, such that the costs incurred in defending the claim would also be incurred in prosecuting the counterclaim. In so doing, I bear in mind the following:

- a. The question is one of substance, not form. Mr Shah sought to impress upon me the number of times he had referred back to the Particulars of Claim in his pleaded Reply to the Defence. I must look to see what issues are actually raised, rather than the words used by the draftsman.
- b. The exercise must, however, be a fairly rough and ready one, which reflects the broad thrust of the claim and counterclaim. That is certainly so on an application, such as this, given a 1 hour time estimate in a CMC. In any event, I was not addressed at any level of detail on the pleadings.
- c. The nature of the enquiry needs to be defined with care. There are several elements of the counterclaim (attached to the causes of action in tort, unjust enrichment and for statutory relief) which go beyond anything contained in the claim. On this basis, Mr Thompson submitted that the counterclaim had an “*independent vitality*” which was distinct from the claim. Whether such a metaphor is helpful in other cases, I do not find it of assistance here. The fact that the counterclaim raises matters which are not part of the claim might or might not have been relevant had an application for security been made against the Defendant. The focus of my enquiry, however, is on whether the issues which are raised on the claim may properly be said to overlap with the issues on the counterclaim (even if there are other issues on the counterclaim which are “*independently vital*”).

31. There is also discussion in a number of the cases, including *Crabtree*, as to whether or not the composition of the action is itself a matter of “*chance*”, in that it could equally well have been the case that the counterclaiming defendant had brought the claim and the claimant the counterclaim. This led to a debate at the hearing as to what would or might have happened if the Claimant had not sued the Defendant. Mr Thompson submitted that I should not assume that the Defendant would have pursued a claim against the Claimant, amongst other reasons because (as he said) the Defendant did

not even know of the identity or at least significance of the Claimant (this latter point was disputed by the Defendant). This was ultimately a rather sterile debate. If anything, the fact that the Defendant has in the event pursued the Claimant for the return of the security deposits, is a good indicator that it would have done so, independently of the claim, if and when it had the necessary information. But I do not consider that my Judgment should be affected by such hypothesising. The real analysis, as I see it, turns on the pleading. If in fact there is a sufficient overlap on claim and counterclaim, such that the overall action would look very similar if it had been brought by the defendant instead of the claimant, then it can properly be said that the actual format is a matter of chance, or perhaps more accurately happenstance, without the need to speculate as to what might or might not have happened in different circumstances.

32. As is perhaps apparent from the summary I have given at the outset of this Judgment, I have not found the pleadings very easy to distil. In particular, it is not clear to me whether the Claimant is seeking merely to assert whatever rights were held by the Lessors, on the basis (as I understand it) that it is the assignee of such rights, or whether it is relying upon its own rights which are independent of those of the Lessors. I did ask Mr Shah for an explanation of this but the answer I was given was rather equivocal. For present purposes, I am not convinced that this particularly matters. The core of the dispute is tolerably clear. The Claimant seeks a declaration that it may retain the balance of the security deposits in compensation for loss incurred by reason of a crack in one engine upon redelivery. The Defendant denies the Claimant's entitlement to retain any of the security deposits and seeks their return or equivalent compensation, through the various causes of action pleaded. The fundamental point, as it seems to me, is that the premise of each of the causes of action in the counterclaim is that the security deposits ought to have been returned within 30 days of delivery. The entire thrust of the claim on the other hand is that, for whatever reason, the deposits did not need to be so returned but were entitled to be retained by (either) the Lessors or the Claimant. I agree with Mr Shah that there is therefore (at least) a very substantial factual and legal overlap between the issues in the claim and those in the counterclaim.
33. There is also a further point which I regard as significant. At [31] of her witness statement, Ms Eyre says the following: "*... the counterclaim and the claim are, in fact on basis of the pleadings in the statements of case, two sides of the same coin and impossible to disentangle. There will only be one fact finding exercise. Indeed, this claim could easily have proceeded with Fiji Airways as the claimant seeking recovery of its Security Deposits. The only reason Fiji Airways is the Defendant is because the Claimant sought a negative declaration.*" This analysis was advanced to explain and justify the basis upon which the Defendant had arrived at its appropriate figure for the security application (with a discount of 20% against its total bill) but it reflected a more telling truth as to the applicable issues. Mr Thompson sought to distance himself from the statement, on the basis that it was not "*evidence*", and he may be right in the strict sense of the word, but it nonetheless reflects the analysis of the pleadings

undertaken on behalf of the Defendant and advanced in support of its application. It is consistent with my own views.

34. In my judgment, accordingly, this is a case where the same issues arise on the claim as on the counterclaim. There may or may not be some issues on the outer perimeters of the claim which are not strictly necessary for determination in the counterclaim. I am not presently convinced that there are any such issues (and none was identified with any clarity). But, if there are, this does not affect the broad analysis. In line with the cases I have referred to, I consider this to be a strong pointer against an order for security. However, it is not by itself determinative and I must have regard to any countervailing factors peculiar to the case. I have already identified above those factors which were relied upon by Mr Thompson. None of them strikes me as especially unusual or significant; indeed, they are likely to be present in most cases where an application is made for security. Taken in the round, I am not satisfied that this is a case in which it would be just to order security for costs against the Claimant and I do not do so.

Determination

35. The application for security is dismissed. Unless the parties wish to have a further hearing, I can deal with costs by way of paper application, if this cannot be agreed.