

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN WALES**  
**CIRCUIT COMMERCIAL COURT (QBD)**

Cardiff Civil Justice Centre  
2 Park Street, Cardiff, CF10 1ET

Date: 20 October 2021

**Before:**

**HIS HONOUR JUDGE KEYSER QC**  
**SITTING AS A JUDGE OF THE HIGH COURT**

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**Between:**

**(1) RICHARD LORD**

**(2) IAN DAVIES**

**- and -**

**(1) MAVEN WEALTH GROUP LIMITED**

**(2) LESLIE JAMES CANTLAY**

**(3) WESLEY LLOYD BERNARD NIXON**

**(4) ADAM EDWARD SKETCHLEY**

**(5) TONY SPAIN**

**(6) INDEPENDENT WEALTH PLANNERS UK  
LIMITED**

**Claimants**

**Defendants**

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**Hugh Sims QC and James Hannant** (instructed by **Harrison Clark Rickerbys Limited**) for  
the **Claimants**

**Henry King QC** (instructed by **Squire Patton Boggs (UK) LLP**) for the **Defendants**

Written submissions: 28 and 30 September 2021  
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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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HIS HONOUR JUDGE KEYSER QC

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 a.m. on 20 October 2021.

**JUDGE KEYSER QC:**

1. Judgment on certain construction issues (“the Initial Claim”) was handed down on 24 September 2021 with the citation number [2021] EWHC 2544 (Comm) (“the Main Judgment”). This is my judgment upon issues of costs consequent on the Main Judgment.
2. I am grateful to counsel for their comprehensive written submissions. I have read and considered those submissions and the bundle of correspondence that was filed with them. I do not, however, intend to add to the time that the costs issue has already taken by reciting the contents of those documents or referring to them at length.
3. The claimants contend that the defendants should be ordered to pay to them (a) all of their costs of the case up until 29 May 2021, including the reserved costs of their application for an interim injunction (“the Application”), and (b) 50% of their costs after 29 May 2021. They seek an order for a detailed assessment of the costs on the standard basis and for payment on account of those costs of £38,446.10, calculated by reference to their costs schedule.
4. The defendants contend that the claimants should be ordered to pay to them the costs of the Initial Claim, including the costs of the Application. They seek summary assessment of those costs in the sum of £92,338.33, being two-thirds of the total amount of their latest costs schedule (£138,507.50).
5. There is no dispute as to the basic principles that apply. The court has a discretion whether to make any order for costs. If the court decides to make an order for costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; however, the court may decide to make a different order. In deciding what, if any, order to make as to costs, the court will have regard to all the circumstances, including conduct, any partial success, and any admissible offers outside Part 36: r. 44.2. In exercising its discretion, the court must bear in mind the need to comply with the overriding objective.
6. The claimants’ contention is nothing if not bold. They were unsuccessful on the primary issue of construction, which determined the contractual regime that applied to the valuation of the shares. They were also unsuccessful on the secondary issue, because they failed to establish that a procedure equivalent to that in Schedule 2 to COSA was applicable, whether by implication or on any other ground. Accordingly, the challenge to the validity of the appointment of Ms Wall was seen to be misguided, as was the claimants’ insistence that they were entitled to specify the documents they were to receive in the course of the valuation process. This last matter had been the “sticking point” between the parties (Main Judgment, paragraph 35) and I clearly rejected the stance that the claimants had taken (Main Judgment, paragraphs 52 and 57).
7. In my view, the question which was the successful party admits of only one answer. It was the defendants. Therefore, prima facie, the defendants would expect to receive their costs of the case from the claimants.

8. I do not consider that a different order is required, in the exercise of my discretion, on the grounds of any partial success of the claimants. The nature and scope of my decision on the claim are fairly indicated in the four declarations that were contained in the order dated 24 September 2021; those declarations were drawn from paragraph 62 of the Main Judgment. The first three declarations were squarely in favour of the defendants' case. The fourth declaration was in substantially the terms of the final two sentences of paragraph 62. Although it might be said that the fourth declaration was of some advantage to the claimants and established a point not hitherto conceded, namely the claimants' entitlement to see and make submissions on any document considered by the Expert, I do not consider that it justifies their decision to commence proceedings or that it requires any departure from the normal costs order in the present case. Ms Wall had been validly appointed as the Expert. She had never indicated any refusal to share with the parties the documentation that she was considering. (As was noted in the Main Judgment, she did not actually have any significant documentation prior to the commencement of proceedings.) Further, the defendants' solicitors (SPB) had by 21 April 2021 accepted that material provided to Ms Wall would be provided to the claimants and that the time for making written submissions to Ms Wall would run from the date of provision of the documentation to the claimants, and on 27 April 2021 SPB agreed to an increase of the time period for such submissions from five days to ten days. Moreover, in an email on 19 April 2021 SPB had acknowledged to the claimants' solicitors (HCR) that it was for Ms Wall as the Expert "to determine the timetable and process she wishes to follow", and as I observed in paragraph 59 of the Main Judgment the terms of Ms Wall's engagement made sufficient provision for a fair timetable and procedure. Meanwhile, the valuation process was on hold. The claimants contend that, because SPB proposed in the course of correspondence (letter of 8 June 2021) that it would be open to the Expert to decide that documents she had requested from one party should not be disclosed to the other party, their stance has been vindicated by the main judgment. But the fact is that this proposal occurred after the commencement of proceedings and in the course of "without prejudice" efforts to resolve the dispute. It justifies neither the commencement nor the continuation of proceedings. The claimants commenced proceedings because they advanced an incorrect contractual argument, which they maintained vigorously until and at the trial. That was their choice. If the Expert had actually gone about the valuation in an unfair manner by preventing the claimants from engaging with the material before her—something she never had a chance to do—the time for legal action might have arisen. In short, I think that Mr King QC is correct to say that, at least as regards the Initial Claim, the claimants have achieved nothing of substance in this litigation; they have certainly achieved nothing that required or justified the commencement of proceedings or that leads me to consider that a departure from the general rule is required. To describe the Main Judgment as "a substantial, though not complete, vindication of the position that the claimants have taken in these proceedings", as Mr Sims QC and Mr Hannant do in their submissions, is unrealistic.
9. What about conduct? In paragraph 61 of the Main Judgment, I expressed the view that both sides had contributed to "an unfortunate and unnecessary

dispute”. So far as concerns the defendants, that observation relates to the terms of the final part of SPB’s letter of 14 April 2021 (see paragraph 33 of the Main Judgment). I think those terms were indeed unfortunate, for reasons indicated in paragraph 60 of the Main Judgment. Looked at in isolation, the letter might be considered conduct that contributed to the claimants’ concerns and prompted them into commencing proceedings. However, when the matter is considered in the context of all other circumstances, I do not think that it justifies any departure from the general rule that the unsuccessful party should pay the costs of the successful party. First, in my view the driving force behind the claimants’ decision to bring proceedings was their mistaken stance on the contractual procedure and on their entitlement to the production of documents of their choosing, not anything said by the defendants. Second, as I have mentioned, the defendants accepted at an early stage that the claimants were entitled to see the documents provided to the Expert; see above. Third, the defendants also agreed at an early stage to an extended period for making submissions and accepted—as was anyway clear from the terms of engagement—that procedure and timetabling were ultimately matters for the Expert. Thus any question of unfairness within the applicable contractual procedure was academic at the time and would remain so until such time, if any, as the properly appointed Expert actually proposed to conduct the valuation unfairly. Things never got that far, because the Expert never had any relevant documentation and never received for consideration submissions as to what documentation was relevant and what opportunity for comment on it was required. Fourth, the “without prejudice save as to costs” correspondence does not assist the claimants but, on the contrary, shows that the defendants were taking a more reasonable and productive approach and offering concessions that go beyond anything achieved by the claimants. I shall not burden this judgment with a recital of the correspondence.

10. In the circumstances, I conclude that the claimants ought to pay the defendants’ costs of the Initial Claim.
11. A discrete question arises in respect of the costs of the Application, which were reserved by the consent order dated 29 May 2021. Ought those costs to be treated simply as costs of the Initial Claim, or ought some different order to be made?
12. The Application, by notice filed on 20 May 2021, was for (1) an order for an expedited trial of the Initial Claim and (2) interim injunctions to restrain the defendants from proceeding with the valuation of the shares “other than in accordance with Schedule 2 of the COSA and in particular by a procedure which provides them with the same access to information as is provided for in paragraphs 2.3 and 3.5 of Schedule 2.” As this indicates, and as the witness statement by the claimants’ solicitor in support of the Application made clear, the impetus behind the Application, as well as behind the issue of the claim itself, was the claimants’ contention that they were entitled in contract and in fairness to access to information of their choosing in accordance with the provisions of Schedule 2 to COSA. The claimants’ contention was that, in circumstances where there was a dispute as to the applicable contractual scheme and therefore as to the Expert’s appointment, the balance of

convenience favoured delaying any valuation until the Initial Claim had been determined, rather than permitting a valuation to proceed which might turn out to have been conducted unlawfully. The defendants consented to an order for an expedited trial and gave undertakings not to proceed with the share valuation in the meantime; see paragraph 36 of the Main Judgment.

13. In my judgment, the basis on which the Application was brought was wrong in law, for reasons appearing sufficiently in the Main Judgment. The defendants acted reasonably and properly in giving undertakings; they are not to be penalised for doing so. I conclude that the costs of the Application ought to be dealt with no differently from the costs of the rest of the Initial Claim.
14. Accordingly, I shall order that the claimants pay to the defendants their costs of the Initial Claim, including the costs reserved by the order dated 29 May 2021.
15. The defendants seek summary assessment of their costs, on the grounds that summary assessment is the usual procedure where the hearing has lasted no more than one day. I do not find that a very persuasive argument, because the real intention is that summary assessment will be conducted at the hearing (“at the conclusion” of the trial or hearing: PD 44, para 9.2), rather than as a separate exercise on a different occasion. Sometimes it is convenient to conduct a summary assessment subsequently on the papers. I do not find it convenient in this case. The amount of the defendants’ costs is very substantial, bearing in mind that they relate to a construction issue that involved a one-day hearing without oral evidence, and there are substantial issues between the parties. In the circumstances, I shall direct a detailed assessment of the costs on the standard basis and shall order a payment on account of the costs.
16. I make the following brief observations regarding the defendants’ costs. First, it was the defendants’ choice to instruct solicitors from the City of London in a case that has no apparent connection with London. They were perfectly entitled to do so but cannot expect to recover the full amount of the resulting costs. Second, however, I should not think that guideline rates represent an appropriate limit on what should be allowed for the time-costs in a case such as this. Third, similarly, the amount of the claimants’ costs schedule (£93,053) does not necessarily represent an appropriate limit on the defendants’ costs, though it might provide some guidance when considering proportionality. Fourth, a point that might require most careful consideration is the increase of £41,918.50 from the defendants’ costs schedule on 14 September 2021 (£96,589) to their costs schedule on 29 September 2021 (£138,507.50).
17. It seems to me to be very unlikely that the defendants will recover on assessment, in respect of the period until and including trial, less than two-thirds of the figure in their first costs schedule: that is £64,000. In respect of post-trial costs, the claim is for nearly £30,000: the difference between the revised costs schedule to trial (£108,638) and the third costs schedule. I should expect the defendants to recover not less than £10,000 of that amount;

whether they should recover more will require serious consideration.  
Accordingly, I shall make an order for a payment on account of £74,000.