Neutral Citation Number [2021] EWHC 653 (Ch)

IN THE HIGH COURT OF JUSTICE **Case No HC 2017-2379**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

B E T W E E N :

Royal Courts of Justice
Rolls Building, Fetter Lane, London EC4A 1NL
Date: 19 March 2021

Before:
ANDREW LENON Q.C. (sitting as a Deputy Judge of the Chancery Division)

KINGS SECURITY SYSTEMS LIMITED **Claimant**

- and -

(1) ANTHONY DOUGLAS KING

(2) STEPHEN JOHN JAMES EVANS **Defendants**

JUDGMENT ON CONSEQUENTIAL MATTERS

Paul Downes QC and Joseph Sullivan
(instructed by Teacher Stern LLP) for the Claimant.

Christopher Newman
(instructed by Walker Morris LLP) for the First Defendant

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.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.00 on 19 March 2021.

1. This judgment follows a hearing by CVP on 3 March 2021 to deal with consequential matters arising out of my judgment dated 18 February 2021 ("the Judgment").

2. The main issues to be determined concern the costs of the proceedings. Before addressing those issues, I will deal with three preliminary matters raised on behalf of Mr King.

Counter-restitution

3. First, Mr Newman submitted that I should not make any decision on costs until I have resolved an issue of counter-restitution arising out of my finding that the Settlement Agreement between Mr King and KSSL had been validly rescinded by KSSL.

4. He referred to the principle that a party rescinding a contract must make counter-restitution of benefits received under the transaction so as to restore the parties to their original position. He submitted that the principle should be applied in this case in the following way:

   4.1 But for the Settlement Agreement, Mr King would have been entitled to be paid his salary for a period of five months, comprising two months during which KSSL would have been required to carry out a fair, reasonable and lawful investigation into Mr King's conduct and a further three months being the notice period under his contract of employment;

   4.2 KSSL had benefited from the Settlement Agreement by being relieved of the obligation to pay Mr King's salary during this five-month period and should now be required to make counter-restitution to Mr King of the amount of the unpaid salary.

5. Mr Newman submitted that no costs order should be made until this issue of counter-restitution is fairly resolved as it could reduce the value of KSSL's recovery to zero or result in a net payment to Mr King and so potentially determine who was ultimately the successful party in the proceedings.

6. The argument based on the need to make counter-restitution of Mr King's unpaid salary was raised explicitly for the first time in Mr Newman's skeleton argument served late on the day before the hearing on consequential matters. I consider that, if this argument was to be relied upon by Mr King in these proceedings, it should have been pleaded in Mr King's Defence and Counterclaim by way of set off against

KSSL's monetary claim and/or as a defence to KSSL's rescission claim. The argument raises a factual issue as to the period required to investigate Mr King's conduct which should have been the subject of disclosure and witness evidence. It is too late to raise the argument now. I am not prepared to defer the determination of issues of costs pending resolution of the issues which it raises.

7. For the sake of completeness, I would add that, had the counter-restitution argument been raised in time to be dealt with at the trial, KSSL would have resisted the argument on the basis that, as at the date of the Settlement Agreement, KSSL had a right to dismiss Mr King for his misconduct in connection with the Range Rover transaction; KSSL was unaware of that right of dismissal because of Mr King's wrongful failure to disclose his own wrongdoing. Mr King's claim for loss of salary would therefore have been met with a defence of circuity of action, leaving no scope for the principle of counter-restitution to apply.

Quantum of damages

8. The second matter raised by Mr Newman concerns the amount of damages to which KSSL is entitled. Mr Newman contends that the amount of the lost profit share as found in the Judgment (£40,666.47) is wrong on the basis that part of this sum comprises profit share said to be due in relation to 2015 but which is in fact unknown.

9. As Mr Downes pointed out, the figure of £40,666.47 was supported by Mr Forsyth's witness statement and accepted by Mr King in cross-examination. Given my finding at paragraph 201 of the Judgment that KSSL lost profit share in the sum of £40,466.47, a challenge to that figure would have to be pursued by way of an appeal.

Interest start date

10. The third preliminary matter concerns the dates from which interest should run. I accept Mr Newman's submission that interest should run from the date on which the

profit share would have been received by KSSL which I will take as being 1 May in each of 2015, 2016 and 2017.

Liability for costs

11. I now turn to the costs. To put the discussion which follows into context, KSSL has incurred costs of over £2 million in pursuing proceedings in which, after succeeding on all the issues except for one minor head of damages and defeating the Counterclaim, it obtained a judgment for £45,666.47 plus interest.

12. The first issue to determine is whether I should make any costs order at all. The normal order, pursuant to CPR 44.2(2)(a) would be that Mr King should pay KSSL's costs on the basis that he was the unsuccessful party. Mr Newman submitted that, in accordance with CPR 44.2(4)(a), I should take into account what he contends was the unreasonableness of KSSL's conduct and make no order.

13. CPR 44.2(4) provides that in deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

> (a) the conduct of all the parties;
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
> (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

14. The "conduct of the parties" to which the court will have regard in deciding what costs order, if any, to make, is defined in CPR 44.2(5) as including:

> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

15. The conduct relied upon by Mr Newman in resisting a costs order against Mr King was (i) KSSL's failure to accept the offer of compensation of £65,000 from TCH (referred to at paragraph 127 of the Judgment) and (ii) KSSL's failure to set off the £70,000 payable to Mr King under the Settlement Agreement against its damages claim. Mr Newman submitted that KSSL's conduct in failing to pursue these alternative routes to compensation and instead pursuing Mr King through court proceedings was unreasonable and oppressive. He submitted that KSSL had made the case impossible to settle from the start by incurring hundreds of thousands of pounds in costs before the case was even mentioned to Mr King. Had KSSL pursued the alternative routes to compensation, according to Mr Newman, the claim and the counterclaim would not have happened.

16. Taking first KSSL's failure to accept TCH's offer of compensation, Mr Downes submitted that this was not unreasonable conduct for the following reasons:

16.1 The Judgment held (at paragraph 199) that, in accordance with the principle established in *The Liverpool (No 2)* [1963] P 64, KSSL was free to sue Mr King rather than accept an offer of compensation from TCH as a joint wrongdoer, without regard to the doctrine of mitigation. Exercising its right to sue Mr King in accordance with this principle was not unreasonable and was not the kind of conduct contemplated by CPR 44.2(5).

16.2 In any event, TCH's offer would not have been as beneficial as the Judgment under which it was awarded damages and rescission of the Settlement Agreement. Accepting the offer would have left a significant shortfall.

17. As to first of these contentions, it does not, in my view, follow from the principle established in *The Liverpool (No 2)* that the conduct of a claimant in suing one joint tortfeasor rather than accepting an offer of compensation from another is necessarily to be treated as reasonable for costs purposes. The issue of costs did not arise in *The*

Liverpool (No 2). I consider that the pursuit of court proceedings for the purpose of recovering compensation which could have been recovered from another party without the need for court proceedings might well be contrary to the overriding objective of enabling the court to deal with cases justly and at proportionate cost. Such conduct would, on the face of it, lead to additional expense and to the unnecessary use of the court's resources to the prejudice of other court users. Interpreting CPR 44.2(5) so as to give effect to the overriding objective, I consider that such conduct might well constitute unreasonable conduct which the court could take into account in deciding what costs order to make.

18. In the circumstances of this case, however, I am not satisfied that it was unreasonable for KSSL to pursue Mr King, despite the offer of compensation made by TCH. At the time the offer was made in July 2017, KSSL did not know the full extent of the financial consequences of the arrangements between Mr Evans, Mr King and TCH (the offer from TCH was in settlement of any liability arising out of both Mr King's and Mr Evans's Range Rover transactions). Moreover, KSSL has, by pursuing Mr King, obtained not only a judgment for £45,666.47 but also rescission of the Settlement Agreement under which it was liable to make a severance payment to Mr King of £70,000. It follows that, even if KSSL had accepted TCH's offer of compensation, it would probably have been necessary to bring proceedings against Mr King in order to obtain the relief to which it was entitled. Having regard to Mr King's responses to KSSL's subsequent offers of settlement, it is most unlikely, in my judgment, that Mr King would ever have agreed to make good any shortfall or would ever have agreed to the rescission of the Settlement Agreement, had KSSL accepted TCH's offer.

19. Mr Newman's argument that KSSL should have set off the damages claim against £70,000 payable under the Settlement Agreement is misconceived, given the finding in the Judgment that KSSL was entitled to rescission of the Settlement Agreement.

20. Had I considered that KSSL's conduct was so unreasonable as potentially to deprive it of a costs order in its favour, it would have been necessary, pursuant to CPR 44.2(4),

to consider all the circumstances including Mr King's conduct and KSSL's admissible offers of settlement (other than its Part 36 offer).

21. Whilst Mr King criticises KSSL for pursuing its claim for a relatively modest sum at vast expense, a not dissimilar criticism could be levelled at Mr King in as much as, instead of admitting liability for the relatively small sum claimed, he chose to fight the claim on what was found in the Judgment to be a false basis, incurring very substantial costs (funded by insurers) in the process, and introducing a Counterclaim which further increased the costs and which was dismissed. Mr King's costs budget in November 2019, excluding the costs of disclosure, was already £734,000. Mr King could have admitted the claim at the outset and challenged the incurred costs at that stage on a detailed assessment. I do not believe that the case was unsettleable; the claim against Mr Evans was settled. I consider that the open offers of settlement made by KSSL in 2020, which were turned down by Mr King, were reasonable.

22. In these circumstances, I am satisfied that KSSL is entitled to a costs order in its favour, the costs to be subject to detailed assessment.

KSSL's Part 36 offer

23. KSSL relies on a letter dated 27 June 2019 which was sent by email to Mr King's solicitors on that date as constituting a Part 36 offer to Mr King pursuant to which it offered to accept the sum of £30,000 in settlement of both its claim and Mr King's counterclaim. The letter included the following passage:

> "This Offer is made pursuant to Part 36 of the Civil Procedure Rules and it is intended to be a claimant's Part 36 offer. Accordingly, if your client accepts this Offer within 21 days (the relevant period), being by 4 pm on 19 July 2019 or any time thereafter, your client will be liable for our client's costs, in accordance with CPR 36.13. This Offer will remain open unless and until it is accepted or withdrawn."

24. KSSL contends that the "relevant period", within the meaning of CPR 36, expired on 19 July 2019 and that, pursuant to CPR 36.17(1)(b), the judgment awarded by the

court against Mr King is at least as advantageous to KSSL as the proposal made in the Part 36 offer.

25. In his skeleton argument for the hearing on consequential matters, Mr Newman submitted for the first time that the letter was not a valid Part 36 offer. This was on the following grounds.

25.1 CPR Part 36.5(1)(c) requires a Part 36 offer to "specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.13 or 36.20 if the offer is accepted".

25.2 The words "or any time thereafter" in the letter did not specify any period. No actual date has been specified, alternatively if the specified date was 19 July 2019, the letter specified a period of less than 21 days, for the following reason. The letter was received by email on 27 June 2019 (17:21). It was never agreed that service would be accepted by email, and so it was served by DX and received by Mr King's solicitors Walker Morris on Monday 1 July 2019. Whether the letter was collected by the DX on Thursday 27 June 2019 or Friday 28 June 2019, the deemed date of service was 1 July 2019 so the 21-day period ended on 22 July 2019.

26. In response to this argument, Mr Downes submitted that, assuming in Mr King's favour that the deemed date of service was 1 July 2019, a reasonable recipient would have assumed that the date of 19 July 2019 mentioned in the letter had been miscalculated. He referred me to the principle stated in the White Book at paragraph 36.2.4 that, even if there are formal or technical defects in a Part 36 offer, the usual costs consequences should follow. He also referred to the recent decision of Pepperall J in *Essex County Council v UBB Waste (Essex) Limited* [2020] EWHC 2387 (TCC) in which the issue was whether an offer contained in a letter dated 7 March 2019 but not served until 8 March 2019 and which required the defendant to accept the offer "within 21 days of the date of this letter" was a valid Part 36 offer. If the 21 days ran (literally) from the date of the letter, the letter failed to specify a relevant period of

less than 21 days from the date of service and was not a valid Part 36 offer. If, however, the 21 days ran not from the date of the letter but from the date of service, the Part 36 offer was valid. Pepperall J held that a reasonable person with all the background knowledge available to the parties would know (amongst other things) that the letter was intended to be a Part 36 offer and that it was not "made" for the purposes of Part 36 until it was served (rule 36.7(2)). The reference to "21 days of the date of this letter" could reasonably be construed in two ways, depending on the start date of the 21-day period. In accordance with the reasoning in *C v D* [2011] EWCA Civ 646, Pepperall J favoured a construction which was consistent with the clear intention to make a Part 36 offer and which ensured that the Part 36 offer was effective rather than ineffective. The 21-day period was therefore to be taken as meaning 21 days from the date of service.

27. In the present case, on the assumption that the date of service was 1 July 2019, the words "within 21 days (the relevant period), being by 4 pm on 19 July 2019" were contradictory. The 21-day period ended on 22 July, not 19 July. A recipient of the letter would therefore have had to decide whether KSSL's solicitors intended to refer to a 18-day period or a 21-day period. In my view, a reasonable recipient of the letter, knowing that the intention was to send a Part 36 offer, would have realised that the reference to 19 July was mistaken and that it was intended to refer to a 21-day period ending on 22 July. The additional words "or at any time thereafter" did not deprive the Part 36 offer of its intended effect. There is no requirement in Part 36 that acceptance of the offer must be time-limited.

28. Mr Downes also referred to the fact that in an email on 14 August 2019 Mr King's solicitors acknowledged KSSL's email dated 27 June 2019 and asked for details of the KSSL's costs. He submitted that Mr King's solicitors thereby represented that service of the letter by email was accepted, just as they had accepted service of other documents sent by email, and that if Mr King's solicitors had made clear at that point that email service was not accepted, the letter of 27 June would have been re-served. In these circumstances, he submitted, Mr King was estopped from denying that the letter was validly served by email on 27 June 2019 with the result that he was not in a position to take issue as to the duration of the 21-day period.

29. Give my conclusion on the construction of the letter, it is not necessary for me to determine this estoppel issue and, given the late stage at which the challenge to the Part 36 offer was raised, it would not have been possible for KSSL to adduce evidence to address it without an adjournment. Had it been necessary to pursue this issue further, I would have accepted Mr Downes' submission that the estoppel for which he contended relates to service rather than the requirements of Part 36 itself so that allowing this estoppel argument to be raised would not be contrary to Pepperall J's conclusion in *Essex County Council v UBB Waste (Essex) Limited* that rules of estoppel should not be introduced into the operation of the Part 36 regime.

30. Finally, Mr Downes referred to the possibility of making a retrospective application pursuant to CPR 6.27 to validate the service of the letter of 27 June 2019. Given my conclusion on the correct construction of the Part 36 offer, no such application is necessary. Had an application been necessary, I would have had to adjourn the hearing.

Consequences of the Part 36 offer

31. It is clear that the judgment awarded by the court against Mr King is at least as advantageous to KSSL as the proposal made in the Part 36 offer. KSSL offered to accept £30,000 but it has been awarded £45,666.47 plus interest (and rescission of the settlement agreement). Accordingly, pursuant to CPR 36.17(4), the court must, unless it considers it unjust to do so, order that KSSL is entitled to:

    31.1 interest on the whole or part of any sum of money (excluding interest) awarded, at a rate not exceeding 10% above base rate for some or all of the period starting on 22 July 2019;
    31.2 costs (including any recoverable pre-action costs) on the indemnity basis from 22 July 2019;
    31.3 interest on those costs at a rate not exceeding 10% above base rate;
    31.4 an additional amount of 10% of the judgment sum (where the judgment sum is less than £500,000).

32. In considering whether it would be unjust to make these orders, CPR 36.17(5) requires the court to take into account all the circumstances including:

> (a) the terms of any Part 36 offer;
> (b) the stage in the proceedings when any Part 36 offer was made, including in particular how long before the trial started the offer was made;
> (c) the information available to the parties at the time when the Part 36 offer was made;
> (d) the conduct of the parties with regard to the giving of or refusal to give information for the purposes of enabling the offer to be made or evaluated; and
> (e) whether the offer was a genuine attempt to settle the proceedings.

33. Mr Newman submitted that KSSL's conduct of the proceedings was so unreasonable that it would not be unjust to deprive KSSL of the normal consequences of obtaining a judgment which is at least as advantageous as the Part 36 offer. Amongst other things, he referred to (i) the findings in the Judgment (paragraph 250) that KSSL was sometimes over-combative in the manner in which it conducted the claim and that the conduct of the proceedings was influenced by the anger felt by Mr Stiefel and Mr Fisher towards Mr King, (ii) KSSL's failure to send a pre-action protocol letter, (iii) KSSL's non-disclosure of the Master Lease Agreement, (iv) incorrect evidence in Mr Telemacque's witness statement and (v) the alleged abandonment of KSSL's core factual case.

34. In order to depart from the normal cost consequences under CPR 36.17, I would need to be satisfied that KSSL's conduct of the proceedings was "out of the norm"; see *Downing v Peterborough & Stanford Hospitals NHS Foundation Trust* [2014] EWHC 4216. With regard to the points raised by Mr King, the fact that KSSL's conduct of the proceedings was over-combative and influenced by anger on the part of Mr Stiefel and Mr Fisher and the fact that KSSL failed to send a pre-action protocol letter do not, in my view, take KSSL's conduct so out of the norm as to deprive KSSL of the usual Part 36 cost consequences. KSSL has already had to pay costs in connection with the non-disclosure of the Master Lease Agreement. The discrepancy in Mr Telemacque's evidence did not denote unreasonable conduct. KSSL did not abandon its factual case as pleaded at paragraph 24 of the Amended Particulars,

namely that Mr King knew of the arrangements entered into between TCH and Mr Evans and authorised Mr Evans to enter into those arrangements; that remained a core part of its case.

Basis of assessment

35. It follows that pursuant to Part 36.17(4)(b) KSSL is entitled to its costs on the indemnity basis for the period from 22 July 2019 onwards. I direct that the costs for the period prior to 22 July 2019 should be assessed on the standard basis. I consider that an order that costs be assessed on the standard rather than indemnity basis for the period prior to 22 July 2019 is fair taking into account KSSL's failure to serve a pre-action protocol letter.

36. If I had concluded that the 27 June 2019 letter was not a valid Part 36 Offer, I would nevertheless have ordered costs to be assessed on the indemnity basis from 22 July 2019 onwards. The court has a discretion to award indemnity costs where the conduct of the paying party takes the case outside of the norm, see *Excelsior Commercial and Industrial Holdings* [2002] EWCA Civ 879. I consider that Mr King's conduct was outside of the norm in the following respects.

    36.1 The factual basis of his Defence that he was unaware of the payment arrangements underlying the Range Rover Transaction was untrue. His evidence in connection with the Range Rover transaction was dishonest.

    36.2 There was no sound evidential basis for the counterclaim. The fact that permission was given to plead the *Grainger v Hill* tort does not assist Mr King. The court, having considered the evidence, has concluded that the evidence did not come close to establishing the tort. Furthermore in advancing the counterclaim, Mr King made serious allegations against KSSL and its representatives which were not made out, including an allegation of deliberate concealment of the Master Lease Agreement, an allegation of deliberately advancing a misleading case that Mr King authorised the Range Rover

Transaction and an allegation that witness statements had been deliberately drafted in order to mislead.

36.3 Mr King falsely accused Mr Evans of perjuring himself and made unsubstantiated accusations that improper pressure was put on witnesses.

36.4 Mr King failed to make any realistic efforts to settle the claim and appears to have instructed his solicitors peremptorily to dismiss reasonable efforts made by KSSL to negotiate a compromise. Mr King's failure to accept the offers of settlement made by KSSL included, not only the offer in the letter of 27 June 2019, but also open offers in June 2020 referred to at paragraph 247 of the Judgment.

37. Mr Newman submitted that the KSSL offers could never have been accepted because Mr King was impecunious. I do not accept that submission. There was no evidence before me of Mr King's financial position. It is not disputed that during the course of the proceedings Mr King received an interim payment of £1.7 million from DWF arising out of a negligence claim brought by Mr King in connection with the Misrepresentation Proceedings. Impecuniosity does not appear to have been raised by Mr King in correspondence as an obstacle to settlement with KSSL. The solicitors' correspondence in June 2020 indicates that the reason why there was no settlement at that stage was that Mr King, unlike Mr Evans, refused to acknowledge any responsibility or regret for his part in the Range Rover Transaction. KSSL's offer of 9 June 2020 made clear that KSSL was prepared to discuss generous payment terms by way of extended interest-free affordable instalments, an appropriate repayment holiday and an outright suspension of payment pending a change of circumstances, subject to an affidavit of means being provided.

Rate of interest

38. The principles to be applied in assessing the rate of interest payable on damages under CPR 36.17(4)(a) were set out by the Court of Appeal in *OMV Petrom SA v Glencore*

International AG [2017] 1 WLR 3465. Sir Geoffrey Vos C (with whom Kitchin and Floyd LJJ agreed) set out the following principles at paragraphs 29 to 42 as follows.

38.1 The award of enhanced interest under CPR 36.17(4)(a) is not limited to compensatory interest.

38.2 The rate of 10% above base rate is not a starting point, it is a maximum.

38.3 The objective of the rule has always been, in large measure, to encourage good practice: to *"create the incentive for a claimant to make a Part 36 offer"* so that a party who has behaved unreasonably, *"forfeits the opportunity of achieving a reduction in the rate of additional interest payable"*.

38.4 Whilst the court has a discretion to include a non-compensatory element to the award, the level of interest awarded must be proportionate to the circumstances of the case. Those circumstances may include (but are not limited to):

(i) The length of time that has elapsed between the deadline for accepting the offer and judgment.

(ii) Whether the defendant took entirely bad points or whether it had behaved reasonably in continuing the litigation, despite the offer, to pursue its defence.

(iii) What general level of disruption can be seen, without a detailed inquiry, to have been caused to the claimant as a result of the refusal to negotiate or accept the Part 36 offer.

38.5 The court must have regard to all the circumstances of the case in setting the enhanced rate of interest.

39. In the same case the Court of Appeal set out the principles to be applied in assessing the rate of interest payable on costs under CPR 36.17(4)(c) (at paragraphs 43 to 45):

39.1 The assessment should be such as to achieve a fairer result for the claimant than would otherwise have been the case. Some of the factors applicable to an award of interest on the judgment sum under CPR 36.17(4)(a) may also be relevant.

39.2 The award is not purely compensatory.

39.3 Account may need to be taken of how the costs, on which an enhanced rate of interest is claimed, were incurred e.g. were the costs incurred in addressing bad points or dishonesty on the part of the defendant?

40. Applying these principles, I direct that:

40.1 Interest on the sum of £45,666.47 be paid at the rate of 2% above base rate per annum for the period up to 21 July 2019 and at the rate of 10% plus base rate per annum thereafter pursuant to CPR 36.17(4)(a).

40.2 Interest on costs be paid pursuant to CPR 36.17(4)(c) at the rate of 10% above base rate per annum.

40.3 An additional sum of 10% of the judgment sum be awarded in the sum of £4,566.66 pursuant to CPR 36.17(4)(d).

41. I consider that the 10% plus base rate is appropriate for the period from 21 July 2019 onwards having regard to (i) the fact that Mr King has been held liable for taking a bribe and breaching his fiduciary duties and (ii) the matters referred to at paragraph 36 above.

Payment on account

42. CPR 44.2(8) provides that where the court orders a party to pay costs subject to detailed assessment it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

43. Mr Newman resisted KSSL's application for a payment on account, first, on the ground that Mr King is impecunious so that there would be no prejudice to KSSL in not ordering a payment; second, that an order for payment on account would precipitate Mr King's bankruptcy and stifle strong claims which Mr King wishes to pursue against the Primeking parties and other third parties. Alternatively, Mr King

submitted that I should adjourn any application for a payment on account pending a possible application for permission to appeal.

44. I consider that it is appropriate to order a payment on account of costs. As I have noted, there is no evidence as to Mr King's assets but, in any event, impecuniosity would not be a good reason to decline to make an order for payment on account, one potential consequence of which is that the costs of a detailed assessment are avoided. An order for payment on account would not necessarily lead to a bankruptcy order. Mr King could challenge the making of a bankruptcy order on the basis that he had valuable claims to pursue.

45. With regard to the quantum of a payment on account, KSSL seeks the sum of £1.4 million. Mr Newman submitted that an appropriate figure would be £400,000 being approximately ten times the amount at stake in these proceedings. I direct that a payment on account in the sum of £1 million be made within 28 days of this ruling.

46. I am not prepared at this stage to stay execution of the order pending a possible application for permission to appeal but if an application for permission is made by 24 March 2021 (the date to which I have extended time for filing an appellant's notice) an application for a stay of execution can be considered at the same time.

Payment out of court

47. KSSL has made payments into court totalling £260,000 pursuant to paragraph 1 of the order of Deputy Master Arkush dated 12 October 2018 and paragraph 5 of the order of Deputy Master Hansen dated 13 December 2019 as security for costs and pursuant to a conditional order respectively. Following the grant of judgment in its favour, I direct that those sums, together with accrued interest, be paid out.