Neutral Citation Number: [2024] EWHC 2139 (Ch)

Claim No: CR-2021-000377

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (Ch D)
IN THE MATTER OF SOLID STAR LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1 NL
Date: 21 August 2024

Before:

MR DAVID REES KC
(Sitting as a Deputy Judge of the High Court)

- -

Between :

QUEENSGATE PLACE LIMITED

Petitioner

(1) SOLID STAR LIMITED
(IN LIQUIDATION)
(2) VIKING WORLD INVESTMENTS SA
(3) PRAKASH BHUNDIA
(4) MINESH BHUNDIA
(5) PROPERTY X1 LIMITED

Respondents

- -

Judgment on Consequential Issues following written submissions

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I direct that no official shorthand note shall be taken of this Judgment and that copies of this Judgment as handed down may be treated as authentic

David Rees KC, Deputy High Court Judge

Mr David Rees KC :

Introduction

1. This judgment deals with consequential issues following the determination by me of a petition brought by Queensgate Place Ltd ("**QPL**") under section 994 of the Companies Act 2006 in relation to the affairs of a company, Solid Star Ltd (**"SSL**"). This petition has been the subject of a number of previous judgments:

   (1) A judgment dated 20 January 2023 of HHJ Jarman KC ([2023] EWHC 93 (Ch)) dismissing an application for summary judgment on the petition ("**the Summary Judgment Decision**").

   (2) A judgment on mine dated 20 September 2023 ([2023] EWHC 2277 (Ch)) determining the liability of the Second, Third and Fourth Respondents for unfair prejudice that I found to have been suffered by the petitioner ("**the Liability Judgment**").

   (3) A further judgment of mine dated 17 July 2024 ([2024] EWHC 1816 (Ch)) determining the remedy to be awarded to the petitioner following my findings in the Liability Judgment ("**the Remedies Judgment**").

2. Various consequential issues arose on the handing down of the Remedies Judgment. With the consent of all the parties, I agreed to deal with these on the basis of written submissions, and this judgment sets out my conclusions on these issues. In accordance with my directions, I have received written submissions as follows:

   (1) From the petitioner, written submissions dated 31 July 2024 prepared by Mr Fenner Moeran KC.

   (2) From the Second and Third Respondents (Viking World Investments SA ("**Viking**") and Mr Prakash Bhundia ("**Prakash**") respectively), written submissions dated 9 August 2024 from Prakash (who is also the sole director of Viking) acting as a litigant in person.

(3) From the Fourth Respondent, Mr Minesh Bhundia ("**Minesh**") written submissions dated 9 August 2024 from Ms Sarah Bayliss and Mr James Kane of counsel.

As on previous occasions I am grateful to all of the advocates, including Prakash, for their submissions.

3. I do not repeat the matters set out in those previous judgments and this judgment should be read as one with the Liability Judgment and the Remedies Judgment.

Corporation Tax – the "Paragraph 67" Issue

4. In the Remedies Judgment I determined to adopt a counter-factual approach to identify what QPL would have received on a members' winding up of SSL had there been no unfair prejudice. I considered two separate counter-factual scenarios; one to determine the remedy as against the Second and Third Respondents, and the other to determine the remedy as against the Fourth Respondent. Having calculated these figures as best as I could on the information that was available to me, I identified that in these circumstances SSL would have had a liability to corporation tax which would have reduced the amount otherwise available to SSL's members. At paragraph 67 of the Remedies Judgment I stated the following:

> "A final point that I need to consider is the impact of Corporation Tax on the counter-factual scenarios that I have analysed above. This was not the subject of any argument by the parties, and I have not therefore included it in my analysis. However, it does appear to me likely that in the scenarios postulated above a charge to Corporation Tax would have arisen as a result of the sale of the properties on the open market and that accordingly an allowance should be made for this additional tax liability in calculating QPL's loss (and thus the purchase price for the shares). I will give the parties an opportunity to make submissions on the extent (if any) to which the figures I have set out above should be amended to reflect this additional liability."

5. There is agreement by all parties in their respective written submissions that, in the counter-factual scenarios that I posit within the Remedies Judgment, corporation tax would have been payable by SSL, and that the applicable rate at the relevant time was 19%. The parties propose that I should deal with it as follows:

6. For the petitioner, Mr Moeran KC, acknowledges that corporation tax would have been payable on SSL's profits from a sale of the from a sale of the properties, but notes (in my view quite correctly) that any deduction allowable in this respect this should not affect the values that I have ascribed to the shareholder loans in my counterfactual calculations; the allowance for corporation tax affects only the balance remaining for distribution among SSL's members after repayment of those loans. Mr Moeran observes that the difficulty in calculating the appropriate deduction is nobody knows what the profits of SSL would have been because of the lack of proper accounts from which to identify them. His primary position therefore is that no deduction for potential corporation tax should be made. Should I be unwilling to accept this primary position, he proposes that assumptions against the respondents should be made and suggests assuming a 20% chargeable gain on the hypothetical sale prices. This would lead to the following deductions:

Scenario	**Net Sale Price**	**Chargeable Gain (20% of net Sale Price)**	**Tax (19% of Chargeable Gain)**
Remedy against R2 and R3	£14,006,700	£2,801,340	£532,254

Remedy against R4	£6,323,700	£1,264,740	£240,300

7. Prakash invites me to adopt different figures. He has, for the purpose of this judgment, disclosed tax computations, apparently submitted to HMRC by SSL. These show that for the year 2014/15 the gain chargeable to corporation tax was 44% of the net proceeds of property sold in that year. In 2015/16 the relevant figure was 48%. He proposes that a similar percentage should be used to calculate the gains that would have been realised on a sale of the properties to PX1 in 2019 and 2020. Adopting a figure of 44% for the chargeable gain, gives the following:

Scenario	**Net Sale Price**	**Chargeable Gain (44% of net Sale Price)**	**Tax (19% of Chargeable Gain)**
Remedy against R2 and R3	£14,006,700	£6,162,948	£1,170,960
Remedy against R4	£6,323,700	£2,782,428	£528,661

8. For Minesh, Ms Bayliss and Mr Kane do not put forward any figures on the basis that he does not have access to any material to enable him to calculate the correct figure.

9. As Mr Moeran and Ms Bayliss and Mr Kane all acknowledge, the court is sadly lacking in material which would enable it to take an informed view on this

matter. Although Prakash has filed copies of SSL's Tax Computations for 2014/15 and 2015/16 in support of his argument, I am unable to compare these against SSL's filed accounts as the accounts for 2014/2015 are missing from the bundle and the accounts for 2015/2016 do not show the amount of tax paid by the company.

10. I do not think it would be just to wholly disallow a deduction for corporation tax when calculating the amounts that the respondents should pay to the petitioner for its shares in SSL. However, I am not satisfied that I should treat the figures now provided by Prakash as reliable indications of the chargeable gain on the properties. In his evidence in the Liability Trial Prakash acknowledged that he had not kept proper records and that because payments were met by various members of his web of companies, the figures to be found in SSL's accounts did not necessarily reflect the true balance of inter-company loans (see Liability Judgment at [51] and [54]). Nonetheless I propose to be more generous than Mr Moeran has suggested and will adopt a figure of 30% for the chargeable gains on the properties. This gives a tax deduction as follows:

Scenario	**Net Sale Price**	**Chargeable Gain (30% of net Sale Price)**	**Tax (19% of Chargeable Gain)**
Remedy against R2 and R3	£14,006,700	£4,202,010	£798,381
Remedy against R4	£6,323,700	£1,897,110	£360,450

11. This means that the balance that would have been available for distribution to the members in the counterfactual scenarios that I set out in the Remedies Judgment fall to be reduced by the above amounts. This in turn means that the

amount that would have been received by QPL falls by 50% of the notional tax liability. Thus:

Scenario	**Amount payable to QPL as per Remedies Judgment**	**Less 50% of notional corporation tax**	**Revised Amount payable to QPL**
Remedy against R2 and R3	£7,081,468	(£399,190)	£6,682,278
Remedy against R4	£3,239,968	(£180,225)	£3,059,743

12. Minesh's contribution amounts to 45.8% of the total (£3,059,743 / £6,682,278). Thus the figures at paragraph 64 of the Liability Judgment fall to be adjusted as follows. The total purchase price for QPL's shares in SSL is to be £6,682,278 together with a further sum equivalent to simple interest at a rate of 1% above the applicable Bank of England base rate from 29 October 2020 to the date of my order. Against that QPL must give credit for any sums it receives from the liquidation of SSL. Liability for the purchase will be as follows:

(1) Prakash, Viking and Minesh are to be jointly and severally liable for 45.8% of the total sum due.

(2) Viking and Prakash are jointly and severally liable for the remaining balance of 54.2%.

(3) Any sums recovered by QPL in the liquidation of SSL shall be set against liability (1) in priority to liability (2); and

(4) Any sums recovered by QPL from Prakash and Viking shall reduce liability (1) in priority to liability (2).

13. In the light of the above an amendment is also required to the figures set out at paragraph 65 of the Remedies Judgment. Upon QPL's shares in SSL being transferred into the names of Prakash, Viking and Minesh, those shares are to be held as to 45.8% for Minesh and 54.2% for Viking and Prakash.

Costs – QPL Costs Budget

14. Before I address the question of liability for costs, I must first deal with an issue relating to QPL's costs budget. That budget was approved at the CCMC on 12 October 2021 and included incurred costs of £95,308 and estimated costs of £731,771. The Liability Judgment was handed down on 20 September 2023. On 23 May 2024, three weeks before the Remedies Hearing, the petitioners' solicitors filed a revised costs budget seeking to increase the budget for their trial phase by £161,964 to cover the Remedies Hearing. A note accompanying the revised budget indicated that the original budget was based upon a trial on liability alone and the costs were approved on that basis. Having reviewed the assumptions that underlay the petitioners' budget as approved on 12 October 2021, it merely assumes a single 8 day trial, although the CCMC ordered a split trial. A total of £87,025 was permitted for that phase of the case.

15. For the Petitioner, Mr Moeran invites me to approve the update to the budget. For Minesh, Ms Bayliss and Mr Kane accept that there has been a significant development in the litigation, namely, the Remedies Hearing. However, they make the point that the petitioner has failed to file its updated budget promptly as required by CPR 3.15A.

16. I agree with Ms Bayliss and Mr Kane that the filing of the petitioner's updated budget is extremely late and, despite it not being agreed, no application was made prior to the Remedies Hearing for a Costs Management Hearing to deal with the updated budget. The scope of the Remedies Hearing was apparent to

all the parties no later than 10 November 2023 when I gave directions for that hearing. No explanation has been provided by the petitioner as to why it took a further six months for an updated budget to be filed. I note also that the updated budget includes £84,514 for the solicitors' costs for a three day hearing and £77,450 for counsel – a total of £161,964 as against the £87,025 permitted for that phase in the original budget. That the petitioner wished to update its budget was mentioned by Mr Moeran at the start of the Remedies Hearing but matters moved on and the point was not dealt with.

17. I have had regard to the decision of Akenhead J in *National Museums and Galleries on Merseyside Board of Trustees v AEW Architects and Designers Ltd* [2013] EWHC 3025 (TCC) mentioned at 3.15A.2 in the 2024 *White Book*. In that case, the judge considered dicta from Coulson J in *Elvanite Full Circle Ltd v AMEC Earth & Environmental (UK) Ltd* which described an application to amend an approved budget after judgment as being a "contradiction in terms". In the *Merseyside* case Akenhead J held that it would not be appropriate as trial judge to revise a budget at such a late stage. Nonetheless he took the view that on the facts of that case it was appropriate for there to be an upward revision of the budget, and stated at [40].

> "It is most appropriate however to leave the detail of this issue to the costs judge but, doubtless, he or she can take into account what I have said".

18. I propose to take the same approach here. I agree that there is here good reason for the court on assessment to depart from the petitioner's approved budget to take into account the need for a second trial to deal with the remedies issue, the scope of which would not have been clear at the CCMC. However, I do not consider that it is now appropriate for me, after that trial has concluded, to approve amendments to the budget and I propose to leave the detail on this issue to the costs judge to resolve.

Costs - Liability

19. As the successful party the petitioner says that the general rule (CPR 44.2(2)(a)) should apply and it seeks its costs from the respondents. The substance of the order sought by Mr Moeran is as follows:

(1) As against Minesh he seeks the petitioner's costs of and occasioned by the petition, subject to a detailed assessment on the standard basis, save for the costs of the summary judgment application against Viking and Prakash.

(2) As against Viking and Prakash he seeks all of the petitioner's costs to be subject to a detailed assessment on the indemnity basis, at least until the conclusion of the liability trial. In justification of an award on the indemnity basis Mr Moeran argues that until mid-2022 Prakash concealed the fact that the six properties had been disposed of to PX1, rendering the relief initially sought by the petitioner impossible. He also points to the failure of Prakash to make reference to the Lazuli litigation which ultimately affected the nature and value of the remedy sought.

20. The respondents raise various points in response. Prakash makes the following arguments:

(1) The petitioner has exaggerated its claim. The Estimate of Value filed by the petitioner on 4 October 2021 in support of the petition put a non-binding estimate value on the petitioner's shares in SSL of £18,000,000. In the liquidation of SSL and in Prakash's bankruptcy the value of QPL's claims is put at £20,000,000.

(2) He observes that the costs actually incurred by the petitioner will be less that those allowed for in its approved budget. In my judgment, this point is not relevant to issues of liability for costs, but it is a matter to be taken into account on a detailed assessment, and it is also a point that I have borne in mind below when ordering a payment on account of costs.

(3) Prakash also refers to the various offers that were made to QPL between April 2017 and August 2019 for a distribution of the assets of SSL between its two members. QPL was controlled for part of this period by Mr Temi Ugboma (to whom I refer in the Liability Judgment at [21] and [22]), and Prakash suggests that QPL would have been better off accepting these offers rather than pursuing the action.

(4) Prakash also relies upon Mr Temi Ugboma's behaviour generally as justifying a departure from the usual costs rules.

(5) Prakash also argues that the petitioner identified 13 matters in his particulars of unfair prejudice at paragraph 54 of the Points of Claim. These were then reduced to six (Prakash states five) grounds at trial on which the petitioner was successful, or partially successful, on four of them.

(6) Prakash also seeks to criticise the petitioner for (a) not following the arbitration protocol within the shareholder agreement and (b) failing to provide disclosure of discussions with Mr Ugboma.

21. The points made on behalf of Minesh are less wide-ranging. He does not seek to make arguments about specific costs that have been reserved from previous hearings (eg the security for costs application). However, Ms Bayliss and Mr Kane make the following points:

(1) Minesh successfully defended two of the six heads of loss claimed by QPL and was partially successful in relation to a third head (it being accepted that he did not bear any liability for the first two property transfers to PX1).

(2) In total the outcome of the Remedies Judgment is that Minesh has been found to be responsible for 45.7% (now slightly increased to 45.8%) of the sums due to QPL.

(3) It may be appropriate to depart from the general rule in a case in which a party makes an allegation of dishonesty against another party which fails at trial (*Thakkar v Mican* [2024] EWCA Civ 552).

(4) Here the petitioner unsuccessfully alleged dishonesty against Minesh.

(5) Given the intertwined nature of the issues and the guidance in CPR 44.3(7) an issues-based costs order is neither desirable nor practical. A better solution would be to apply the same percentage reduction already found to apply in relation to Minesh's liability for the sum he has been ordered to pay towards the buy-out order to the costs order as well.

22. I have taken all of these submissions into account and have reached the following conclusions:

(1) Although the "non-binding" value ascribed by the petitioner to its shares in SSL was put at £18,000,000, that was in circumstances in which the petitioner was in ignorance of the true financial position of SSL. That ignorance arose from the manner in which Prakash had managed the company, and the lack of financial information that was available to QPL. The value that QPL has sought to place upon its claims in SSL's liquidation or in Prakash's bankruptcy is not a matter that I consider that I need to take into account when determining costs in these proceedings.

(2) I do not consider that the offers made between April 2017 and August 2018 take matters further. Prakash may be correct that if the parties had wound up SSL at that stage, the petitioner would have received more than they will now receive under my award. However, that is because most of the acts which I have found caused unfair prejudice to the petitioner had not yet taken place. Four of the properties which were ultimately transferred to PX1 remained in SSL's hands. No liability had been crystallised against SSL in the Lazuli Claim. In the circumstances

I do not consider that these are offers which can or should be taken into account in determining liability for costs; these were proposals in the course of the events that have given rise to this claim; indeed they were made before the greater part of the wrongful acts which have given rise to these proceedings had even taken place. The same analysis applies to the conduct of Mr Temi Ugboma. He was ceased to be a director of QPL no later than December 2019. The proceedings were not issued until February 2021.

(3) Whilst QPL did not succeed on every ground of unfair prejudice that it advanced, it succeeded on a number of valuable grounds, and as a result it has achieved a remedy against the Second and Third Respondents in a sum of over £6.6M, and in a sum of over £3M against the Fourth Respondent. By far the largest amount of time at the Liability Hearing was spent on those issues upon which the petitioner was successful. The issues upon which it failed took up a relatively small part of the hearings and did not cause a significant increase in the length or costs of the proceedings.

(4) In the circumstances I take the view that the petitioner has largely succeed on its petition and should be entitled to its costs under the general rule. No relevant offers (that is to say offers made after the petitioner's cause of action had accrued and after the claim had been brought or was in in active contemplation) have been brought to my attention and I see no reason to depart from the general rule as to costs.

(5) Although the quantum of the award against Minesh is less than the quantum of the award against Viking and Prakash, I do not propose to differentiate between the respondents as to their respective liability (save that Minesh is not responsible for QPL's costs of the summary judgment application against Viking and Prakash). The difference in the quantum of the two awards, reflects my finding (and QPL's concession) that Minesh was not liable for the sale of the first two properties to PX1. However, as Mr Moeran has observed the costs of dealing with issues in relation to those two properties was entirely subsumed with the issues in dealing with the properties transferred to PX1 generally. At the Remedies Hearing Minesh unsuccessfully argued that any remedy ordered against him should be limited to a modest percentage of the award against Prakash and Viking. Moreover, as a consequence of Minesh being professional represented at trial, the reality has been that the greater part of submissions at both the Liability Hearing and the Remedies Hearing dealt with issues as between QPL and Minesh.

(6) As to the point taken by Ms Bayliss and Mr Kane regarding QPL's unsuccessful case that Minesh was dishonest, I have nevertheless found Minesh was indeed responsible for the breaches of fiduciary duty which were alleged against him. That I did not find those breaches to be dishonest, can be regarded as a modest victory for Minesh. However, I do not consider that authorities such as *Thakkar v Mican* (nor *Clutterbuck v HSBC* [2015] EWHC 3233 (Ch) – referred to in *Thakkar* at [22]) where the substantive claim itself failed, provide guidance as to how the costs discretion should be exercised where (a) the petitioner has

made out its case for breach of fiduciary duty, but (b) failed to show that the breach of duty was also dishonest.

23. As to the basis of assessment, QPL seeks an assessment against Minesh on the standard basis and I agree that this is the appropriate basis in relation to him.

24. In relation to Prakash, I will award costs on the indemnity basis up to the date of the Liability Judgment. I agree with Mr Moeran that Prakash's conduct within these proceedings in (a) failing to disclose the sales of the six properties to PX1 and (b) failing to disclose either the Lazuli Claim or the fact that judgment in those proceedings had been awarded against SSL are factors sufficiently out of the norm to justify an award of costs against him on the indemnity basis, up to and including the date of the Liability Judgment.

25. As to liability between Prakash and Viking on the one hand and Minesh on the other.

(1) Prakash, Viking and Minesh are to be jointly and severally liable for QPL's costs of the petition (save for the costs of the summary judgment application against Prakash and Viking) such costs to be assessed on the standard basis.

(2) Viking and Prakash are jointly and severally liable for QPL's costs of the petition up to the date of the Liability Judgment, such costs to be subject to detailed assessment on the indemnity basis.

(3) Any sums recovered by QPL in the liquidation of SSL shall be set against liability (1) in priority to liability (2).

(4) Any sums recovered by QPL from Prakash and Viking shall reduce liability (1) in priority to liability (2).

(5) As between each other, if Minesh seeks a contribution from Prakash and Viking, their respective culpability should be assessed as 40% Minesh and 60% Prakash and Viking. This reflects the fact that although the primary responsibility for the underlying liabilities to QPL lie with Prakash / Viking (see paragraph [66] of Remedies Judgment), a significant portion of the costs of the two trials reflected the arguments being made by Minesh for his own benefit.

Payment on Account

26. 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 a good reason not to do so. None of the respondents have sought to persuade me that there is a good reason here not to order a payment on account and I do not consider that any such reason exists.

27. In setting the amount of the payment on account, I take into account the following:

(1) The petitioner's approved budget in this case is £827,079.42.

(2) Although this is a case which has been costs-budgeted, there are elements of the petitioners' approved budget which seem likely to be significantly greater than the costs that will ultimately have been incurred for those phases.

a) £61,200 was permitted for the ADR/Settlement phase, although no ADR / mediation ever took place.

b) £166,750 was permitted for expert reports. In the end only two property valuations were filed by the petitioner.

c) £173,018 was permitted for disclosure. It is recognised by all parties that the disclosure given by the respondents (and in particular by Viking and Prakash) was significantly less than would have been envisaged at the CCMC.

(3) These three phases amount to just over £400,000 – nearly one half of the petitioner's approved budget. Nonetheless, although the petitioner is unlikely to have incurred costs to the level of its budgeted costs under these heads, it will still have incurred a level of costs in respect, at least, of the disclosure and expert report phases.

(4) Further the petitioner has incurred additional unbudgeted costs in relation to the Remedies Hearing and, as I have set out above, I have concluded that there are good reasons for the court to depart from the approved budget in this regard.

28. In the circumstances I will make an order requiring the respondents to pay the sum of £500,000 on account of the petitioner's costs. This liability is joint and several in accordance with paragraph [25] above.

Freezing Orders

29. Following the handing down of the Liability Judgment on 20 September 2023 I continued the various interim freezing orders that had been made in this matter. My order provided that these would continue until further order.

30. Mr Moeran has raised the question of whether a further order continuing these freezing orders is required following the Remedies Judgment. I do not think that one is necessary, but out of an abundance of caution I will make renewed orders further extending the existing freezing orders.

31. This course of action is not opposed by Minesh. Prakash has queried whether the order is required in relation to him, given that his assets have vested in his trustee in bankruptcy. I am satisfied, again out of an abundance of caution that the freezing orders should remain in place. If Prakash's trustee wishes to apply for them to be varied or discharged, he has, of course, permission to do so.

Other Matters

32. In his written submissions Prakash makes various points about the extent to which my Remedies Judgment may have a bearing on the sums that Viking may claim in SSL's liquidation. I do not need to deal with these, save to observe, that my conclusions as to the amounts that should have been available to SSL's members on a members' winding up were based on the counter-factual assumption that the unfair prejudice had not actually occurred.

33. I would therefore ask that the parties agree a final order giving effect to the matters set out in this judgment and the Remedies Judgment and submit it to me for approval.