Neutral Citation Number: [2024] EWHC 809 (Ch)

Case No: CR-2023-005013

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF WINDRUSH ALLIANCE UK COMMUNITY INTEREST COMPANY
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 12 April 2024

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE PARFITT

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Between :

TCPC MANAGEMENT LIMITED

Petitioner

- and –

WINDRUSH ALLIANCE UK COMMUNITY INTEREST COMPANY

Respondent

- -
- -

Aidan Casey KC (instructed by **Burgess Okoh Saunders Limited**) for the **Petitioner**
Ian Mayes KC and John-Paul Tettmar-Saleh (instructed by **Devonshires Solicitors LLP**) for the **Respondent**

Hearing dates: 9 and 12 February 2024; written submissions 27 March 2024

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JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10:30am on 12 April 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

Deputy Insolvency and Companies Court Judge Parfitt:

1. This is a consequential judgment dealing with the costs of an application by Windrush Alliance UK Community Interest Company (the "Company") to strike out a winding up petition presented against it by TCPC Management Limited (the "Petitioner"). Judgment on that application is reported at [2024] EWHC 683 (Ch) (the "Judgment").

2. The Judgment was handed down remotely on 22 March 2024 by circulation to the parties and release to the National Archives. The parties agreed an order consequential on the Judgment, which provided for them to file by 27 March 2024 written submissions on costs and brief written submissions in support of any application for permission to appeal. The order provided that the parties were to file dates to avoid for a consequentials hearing with a time estimate of one hour, but that hearing was to be vacated in the event that the questions of costs and permission to appeal could be dealt with on paper.

3. On 27 March 2024 both sides filed costs submissions. The Company filed draft grounds of appeal.

4. Having considered these submissions, I have formed the view that it is appropriate to deal with consequential matters without a hearing. This judgment sets out my reasons for the consequential order I will make.

5. I have provided the Company with my reasons for refusing its application for permission to appeal in a separate Form N460. Permission to appeal will need to be sought from a single Judge of the High Court. As provided by the 22 March 2024 order, the 21-day time period for doing so will run from 12 April 2024.

6. In relation to costs, the Petitioner seeks an order for indemnity costs; the Company concedes that it is liable for costs on the standard basis.

7. Having reviewed the without prejudice save as to costs correspondence, and having considered the matter as a whole, it does not seem to me that the present case is outside the norm such that an award of indemnity costs is justified. The Petitioner complains that the Company's conduct in pursuing an unfounded strike out application including hopeless grounds, in the face of clear invitations by the Petitioner to come to an amicable settlement, means that the Company's conduct has been outside the ordinary and reasonable conduct of proceedings. With hindsight, the Company could well be subjected to those criticisms. But hindsight should not be applied in this assessment. What matters is the Company's approach as the matter progressed, assessed in its full context. Looking at it in this way, the Company's conduct is not wholly outside the ordinary and reasonable way in which litigation ought to be conducted. Bringing an application which fails (without more) is not a justification for an award of indemnity costs. The Company's failure to engage in settlement discussions as fully as the Petitioner would have liked appears to have reflected the Company's

belief that it was the victim of a serious wrong at the hands of the Petitioner. Although that belief was ultimately unjustified on the evidence the Company was able to lead, there is no reason to doubt that the Company's arguments were put forward in good faith, or that it was acting unreasonably or inappropriately in raising the matters which it did.

8. I will therefore order that the Company pay the Petitioner's costs of the strike-out application on the standard basis.

9. As to whether the costs should be assessed summarily or an order made for detailed assessment, the normal approach for cases lasting less than a day is for summary assessment to take place unless there is a good reason not to do so "*for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily*" (as set out in paragraph 9.2 of Practice Direction 44).

10. The Petitioner has submitted three schedules of costs, for different phases of this litigation, which total more than £150,000 including VAT. The significant size of that bill, in the context of a hearing which lasted half a day, seems to me to call for a degree of caution when considering whether to carry out a summary assessment. In justifying its significant costs spend, the Petitioner draws the court's attention to the conduct of the parties, the amount of money in dispute, the importance of the matter, the complexity of the case, the skill, effort etc. required (involving leading counsel on both sides) and the time spent on the case. Those points, drawn from CPR Rule 44.4, may have some force; but conducting a fair summary assessment of a bill of this magnitude is something the court would approach with trepidation.

11. The Company has filed detailed submissions which indicate that there are very significant areas of dispute, both as to the work carried out for particular aspects of the case, and the rates charged. By way of example only, disbelief is expressed that the Petitioner's solicitors can have spent 84 hours – 12 working days – in attendances on the Petitioner: 50 hours on personal attendances, 18.7 hours on letters and emails, and 15.4 hours on the telephone. The Company contrasts its own time (just 20.8 hours), which included validation order applications. The Company proposes that £5,000 is a reasonable maximum for this element of the costs. This would represent less than 20% of the costs claimed by the Petitioner.

12. This is just one aspect of the dispute over the bill; the Company makes similar points about other aspects of the claimed costs, which indicate a great gulf between what the Petitioner is claiming and what the Company considers to be reasonable and proportionate. The Company also complains about the Petitioner's approach to advertisement, which kept the parties on "red alert" in the approach to the first hearing of the Company's application, which the Company says would justify a 10% reduction in the Petitioner's entitlement to costs to mark the court's disapproval.

13. It also seems that the Company's submissions refer to just one of the three bills of costs filed by the Petitioner (albeit the largest, coming to a total figure of nearly £132,000 including VAT).

14. These significant complaints and difficulties are not the kind of matters which are likely to be able to be resolved efficiently or fairly in a summary assessment procedure; the court faces the uninviting prospect of choosing between a

disproportionately long and detailed hearing which may not be listed for some time, or dealing with matters swiftly but roughly on the basis of written submissions. Neither course is attractive or likely to produce a just result. Given the size of the bills, and the extent of the disputes between the two sides, it seems to me that there is a good reason in this case for ordering costs to be the subject of detailed assessment if not agreed and I will do so.

15. Where the court makes an order for costs to be the subject of detailed assessment, it will order a reasonable sum to be paid on account of costs unless there is a good reason not to do so, as provided by CPR Rule 44.2(8).

16. In the present case, there is no good reason not to make such an order. One reason not to do so is that neither side has addressed a proposed payment on account in its written submissions. I do not consider that this is a good reason not to order a reasonable payment on account, as the submissions the parties have made in relation to the presumed summary assessment reflect the points they would be likely to make in relation to a payment on account. I have considered whether it is fair to order a payment on account without specific submissions on this point, and I consider that I am able to do so subject to either side having a right to set aside or vary the order I will make (which will have been made without a hearing), solely in relation to the question of the payment on account. Although the other parts of the order have also been made without a hearing, the parties were given an opportunity to make representations and it is reasonable, proportionate, swifter, cheaper and overall more just to proceed without a hearing. The appropriate payment on account is not as clearly in the same category. Although it falls within the question of costs on which the parties

agreed (and were ordered) to file written submissions, neither side has taken the opportunity to file submissions on this point, assuming (perhaps) that a summary assessment would be the only outcome. Had the matter been raised at an oral hearing, instructions could have been taken and specific submissions made. If either side considers that dealing with the matter in this way has led to an unfair result, they should be entitled to challenge it and the order .

17. Turning to the quantum of the reasonable payment, the concerns raised by the Company, and the very significant bills, mean that a lower percentage of the claimed costs will represent a reasonable payment on account. Having considered the items on the bills in the light of those factors, it seems to me that an appropriate payment on account is the sum of £70,000 (inclusive of VAT). This payment on account is to be made within 14 days in the usual way.

18. The likelihood is that the balance of the Petitioner's costs will be dealt with in the liquidation of the Company (if it is subsequently wound up), or set off against an order in the Company's favour if the petition is unsuccessful whether by way of an appeal against my earlier decision or at the substantive hearing of the petition. The Company is not presently in liquidation and it would be premature to make an order that the balance of the Petitioner's costs be treated as costs payable as an expense of the liquidation under Rule 7.108(4)(h) of the Insolvency Rules 2016. If the Company is subsequently wound up, it might be advisable for the Petitioner to seek an order confirming that the balance of its costs of this application form part of the costs which are payable as an expense of the liquidation, to avoid any doubt arising.