Claim No: BL-2021-001176
Neutral Citation Number: [2022] EWHC 3513 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

7 Rolls Building,
Fetter Lane,
London

Date: 13 October 2022
Start Time: 15.29 Finish Time: 17.47

Before:

DEPUTY MASTER GLOVER

- -

Between:

SANTINA LTD

Claimant

- and -

RARE ART (LONDON) LTD T/A KOOPMAN RARE ART

Defendant

- -

DARIA GLEYZE (instructed by **Adams & Remers LLP**) for the **Claimant**
TOM MORRIS (instructed by **Teacher Stern**) for the **Defendant**

- -

THREE APPROVED JUDGMENTS

- -

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DEPUTY MASTER GLOVER:

First Judgment

(15.29)

1. By a claim form issued on 16 July 2021 the claimant, Santina Ltd, brings a claim against the defendant to the value of £181,500. The claimant is a company incorporated in the Seychelles. By application notice dated 25 May 2022, the defendant applies for security for costs pursuant to CPR 25.13(2)(a) and (c). I will provide an ex tempore judgment. The trial in this matter is listed for hearing on 11 November 2022. Accordingly it is vital for the parties to know what the position is today in relation to the defendant's security for costs application.

2. The application was listed for half a day, starting at 10:30AM. The parties' submissions have run until 2.20 p.m. this afternoon, the court having sat through the traditional lunch break. There are other pressures on the court's time. Accordingly, I must keep this judgment short and seek to deal with essential issues. For the avoidance of doubt, I have considered all the witness statements to which I have been directed and the submissions that have been made. No discourtesy is intended by the brevity of this judgment.

3. The claimant today has been represented by Miss Gleyze of counsel, and the defendant by Mr Morris of counsel. I have had the benefit of helpful skeleton arguments from both parties, which I have read.

4. Mr Morris at the beginning of the hearing advised the court that the application is now only advanced on the basis of CPR 25.13(2)(c).

5. Turning to the background to this claim, again I must deal with this in short. The claim concerns the purchase by the claimant of two French silver-guilt soup tureens. The price paid for these tureens was £181,500. The claimant asserts that it bought the tureens on the basis of explicit and implicit representations that were made by the defendant going, in essence, to the provenance and value of the tureens. The claimant contends in its claim that those representations were false, and it pleads that the representations were made negligently, alternatively fraudulently, or (in the alternative) innocently. The claimant seeks the rescission of the sale agreement in relation to the tureens and repayment of the sum of £181,500.

6. There is a discrete limitation issue in the case. The tureens were purchased on 1 February 2013, and a limitation defence has been raised by the defendant. I am told that there is no reply to the defendant's defence. Nonetheless, I understand from Miss Gleyze that the claimant's position in relation to the limitation defence is that the claimant was not aware of the misrepresentations until more recent times.

7. At the end of April 2022, the claimant applied to expedite the claim. I am told by counsel that the application was made for reasons that included the health of the claimant's witnesses and the need for this matter to be disposed of before the witnesses' health deteriorated further. I am told that the matter came before Miles J in the urgent applications

list, and - although I have not been taken to his order - that he determined to order an expedited CCMC. That CCMC came before Deputy Master Bowles on 17 June 2022.

8. I have been taken to the order of Deputy Master Bowles. It is clear that shortly before that hearing, on 25 May 2022, the defendant's application for security for costs was issued and it was before the Deputy Master at the CCMC. Deputy Master Bowles reserved the trial of the claim to himself, and provided for a three day time estimate for that trial on the first open date after 11 November 2022. I have been told that the trial has been fixed to begin on 11 November 2022. The Deputy Master provided directions towards that trial requiring disclosure by 29 July 2022 and witness statements by 16 September 2022. It is plain from that timetable, that the trial of the action was expedited. The Deputy Master also dealt with costs budgeting, and I have before me today the front sheet from the parties' approved costs budgets.

9. In addition, Deputy Master Bowles provided directions in the application for security for costs. He required evidence from the claimant in response by 8 July 2022, any evidence in reply from the defendant by 22 July 2022, and he then listed the matter for the first open day after 5 August 2022. I am advised by counsel - both of whom were present at that hearing - that the Deputy Master had hoped that the application for security for costs would come before him in August 2022, some three months before the start of the listing window for the trial. Unfortunately, the application could not be accommodated by the court in August 2022,

whether before Deputy Master Bowles or a different judge, and it now comes before me today.

10. I now turn to the relevant legal principles.

11. CPR 25.12 states:

> " (1) A defendant to any claim may apply under this section of this Part for security for his costs of the proceedings.
>
> (Part 3 provides for the court to order payment of sums into court in other circumstances. Rule 20.3 provides for this section of this part to apply to Part 20 claims).
>
> (2) An application for security for costs must be supported by written evidence.
>
> (3) Where the court makes an order for security for costs, it will—
>
> (a) determine the amount of security; and
>
> (b) direct—
>
> (i) the manner in which; and
>
> (ii) the time within which the security must be given."

12. CPR 25.13 continues:

> "(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, or
>
> (ii) an enactment permits the court to require security for costs.
>
> (2) The conditions are—
>
> (a) the claimant is—
>
> (i) resident out of the jurisdiction; but

(ii) not resident in a State bound by the 2005 Hague Convention, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982;

(b) [Omitted]

(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;

(d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;

(e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;

(f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

(Rule 3.4 allows the court to strike out a statement of case and Part 24 for it to give summary judgment.)"

13. I have reminded myself of the guidance provided in the notes in *The White Book* at part 25. In particular, I was taken by Miss Gleyze to paragraph 25.12.6, which I have read again with care, and which states:

"Although an application for an Order for security for costs may be made at any stage of the proceedings, it should be made promptly as soon as the facts justifying the Order are known. The Commercial Court Guide requires the first application for security to be made no later than the first case management conference (Appendix 10, para.1; see Vol.2 para.2A-169). If it is appropriate to do so a defendant may apply at an earlier stage and include in the application notice an application for the time for serving the defence to be extended to a date some days after the date upon which claimant provides any security ordered by the court (*Lord Ltd v HSBC Bank Plc [2018] EWHC 860 (Comm)*). Delay in making the application is one of the circumstances to which the court will have regard when exercising its discretion to order security (see *Everwarm Ltd v BN Rendering Ltd [2019] EWHC 1985 (TCC)*, Cockerill J, at [15]–[16]). The court may refuse to order security if the delay has deprived the claimant of time to collect the security, if it has led the claimant to act to their detriment, or may cause them hardship

in the future conduct of the action. In other circumstances delay may deprive the applicant for security of some or all of the costs already incurred in the proceedings, security being given for future costs only.

In *RBIL v Ryhurst [2011] EWHC 2209 (TCC); [2011] B.L.R. 721*, it was held that a late application for security was likely to restrict the respondent's ability to trade: of the gross amount for which security was appropriate (£2 million) £500,000 was deducted for lateness.

Where an application was made only three months before the date fixed for the trial, security was limited to future costs (*Warren v Marsden [2014] EWHC 4410 (Comm)*).

Where an applicant delayed his application for some three months (pending the resolution of a jurisdiction dispute made by another defendant) the Master exercised her discretion against awarding security for costs and this was upheld on appeal: the decision as to delay was an exercise of discretion which the Master was entitled to make; the later that an application for security is made, the smaller is the opportunity for the claimant to consider his choice of putting up security in order to continue his claim or withdrawing it in order to avoid further expense (*Re Bennet Invest Ltd [2015] EWHC 1582 (Ch)* (Richard Millett QC)).

In *Owners of the Panamax Alexander v Registered Owners of the NYK Falcon [2022] EWHC 478 (Admlty)* (Andrew Baker J), it was held appropriate to weigh in the balance the degree to which, if at all, the lateness of the application will cause any prejudice to the claimant. On the facts of that case there were none. This was even allowing for the argument that the reason that security for costs applications should be brought sooner rather than later was to give the claimant a meaningful opportunity to decide whether to pursue the claim or drop it, paying the costs, prior to the more substantial costs being incurred that will be incurred after whatever earlier point was the time when, all things being equal, a security for costs application could have been brought."

14. I was taken by Mr Morris to an extract from *Friston on Costs*, and in particular paragraph 15.3.6 which says as follows:

> "Liquidity. Park J has approved of the following pre-CPR comments of Nicholas VC: 'The question is: will the company be able to meet the costs order at the time when the order is made and requires to be met?' Thus, regardless of whether the claimant's assets would be sufficient to discharge any relevant costs debt, an order

> may be made against a claimant where those assets are illiquid to such an extent that they could not be realised in time to pay (in practice, however, many claimants prefer to borrow against the assets or to obtain a bank guarantee, rather than to have an order made against them)."

15. I was also taken to *Friston*, paragraph 15.9.2, and in particular the following passage:

> "Where a party seeks to defend an application on the basis that it has been made late, the mere fact that it could have been made earlier would not afford a defence. There would have to be a disadvantage arising out of a delay before a defence could be successful. Applications may be delayed for entirely proper reasons. It may, for example, be entirely proper to take time before issuing the application to seek the agreement of the party against whom the order is sought or to wait until the claim has been fully pleaded. That said, the fact that an application has been made late can be a significant factor against the applicant (not least because the fact that an application has been made late will usually mean that substantial costs have already been incurred). Ward LJ had the following to say on the topic:
>
> > 'I am satisfied that when the judge came to exercise his discretion, he did not bear in mind what seems to me to be the crucial distinguishing fact in this case, that is the judge gave his judgment three weeks before a 20-day trial was listed for hearing. The claimant had already put up security in actual money, and was to be deemed to have put up further security through the operation of the Part 36 offers. That is one point. Secondly, because a trial is three weeks away, the order of security could not sensibly be made on the usual terms that the trial of the action be stayed.'
>
> Ward LJ went on to say that in many cases it would be oppressive to require a party to find large amounts of money immediately before a trial. Where the court does make an order for security for costs, the amount of that order may be reduced to take account of any difficulties that the tardiness of the application may have caused. Teare J, for example, restricted the award to future costs only."

16. In addition, I was taken to *Friston*, paragraph 16.50:

> "It is commonly the case that a failure to prove dishonesty or fraud will result in an award of costs on the indemnity basis if the allegations are found to have been unreasonably made. Given the fact that, where allegations of fraud are made out, the party accused will often be condemned to pay costs on the indemnity basis, it is no surprise that Tomlinson LJ made the point that 'What is sauce for the goose should be sauce for the gander'."

17. In addition, I was taken to the well-known decision of the Court of Appeal in *SARPD Oil International Ltd* [2016] EWCA Civ 120, and in particular I was referred to paragraphs 5, 17 and 19 to 21 of that judgment. Paragraph 17 reads as follows.

> "If a company is given every opportunity to show that it can pay a defendant's costs and deliberately refuses to do so, there is in our view every reason to believe that, if and when it is required to pay a defendant's costs, it will be unable to do so."

Paragraph 19 continues:

> "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 Point 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."

18. I have also been taken to the decision in *Longstaff International Ltd* [2004] 1 W.L.R. 2917, and in particular paragraph 17 of that decision where Park J stated:

> "I move therefore to rule 25.13(2)(c). Mr Bacon says that that condition applies, and I agree. An important point on the paragraph is that it (or the equivalent wording in section 726 of the Companies Act 1985) will be satisfied if, upon the trial going against Longstaff and that company being ordered to pay Baker & McKenzie's costs within the normal sort of timescale (usually 14 days) Longstaff could not, by reason of illiquidity, pay them. Longstaff, I imagine, could pay in the end, but the nature of its asset position is such that it could not pay with any high degree of promptness. Longstaff, in my judgment, could not say that rule 25.13(2)(c) does not apply to it because eventually it would be able to realise its asset (being the shares in Redwell). There is no suggestion that those shares could be realised at short notice."

19. I have also been taken to the decision in *Everwarm Ltd* [2019] EWHC 1985 (TCC), and in particular my attention has been drawn to paragraphs 15 to 19 and 31 of that judgment. I note in that case that the "first indication" of a security for costs application had been made in April 2019, shortly before a trial of the matter in or around June 2019. Paragraphs 15 to 16 of the judgment states as follows:

> "Therefore, overall I have come to the conclusion that the condition for exercise of the jurisdiction is met. I am going to have to consider whether I should exercise my discretion to order security. The first question is the timing; on its face this application comes very late in the day, five weeks before trial. There are authorities where the court has refused to grant security simply on the basis that an application was made late. Those were however, applications in which I consider it is probably correct that, as Mr Quirk says, the objection was really that all the costs had by then been incurred. However, there are, nonetheless, authorities which state very clearly that lateness may be acceptable and allowed in this context, and those authorities were helpfully highlighted by Ms Lee.
>
> 16. In her skeleton argument she referred me to Accident Exchange Lta & Anor v. McClean & Ors [2018] 4 Costs LR 713, where Teare J provided a survey of the principles to be applied, and said that delay in making the application is a circumstance to which the court will have regard when exercising its discretion in order security, and that it may refuse to order security where delay has deprived the claimant of the

time to collect security, or led the claimant to act to his detriment or may cause hardship in the future costs of the action. Equally so where the material relied upon in support of an application has been available for a long time"

20. I have also been taken to the decision of *Accident Exchange* [2018] 4 Costs LR 713, and in particular my attention has been drawn to paragraph 14 which reads:

"14. The only authority to which it is necessary to make reference in the context of delay is the decision of Hildyard J in Re RBS [2017] 1 WLR 4635, where at para 44 he said:

"Once again, however, there are no hard and fast rules. An order for security for costs can be made at any stage of the proceedings. For example, in Warren v Marsden [2014] EWHC 4410 (Comm) an application for security against a claimant was made three months before the date fixed for the trial, in an action which had commenced two years and three months before the hearing of the application. Teare J held that the material being relied upon to support the application had been available for 'a very long time' and that the application could have been made at the commencement of the action rather than shortly before trial. However, he nevertheless granted security (albeit limited to future costs). Thus the balance may be struck in the context of delay by fashioning the order so as to restrict it in its application to costs from and after a later point."

And just before making those remarks Hildyard J had quoted from a decision of Mr Richard Millett QC, sitting as a deputy judge of the Chancery Division, in the case of Re Bennet Invest Ltd [2015] EWHC 1582, where he said, at para 28:

"Delay in making the application is one of the circumstances to which the court will have regard when exercising its discretion to order security. The court may refuse to order security where delay has deprived the claimant of the time to collect the security, or led the claimant to act to his detriment or may cause hardship in the future costs of the action. The court may deprive a tardy applicant of security for some or all of his past costs or restrict the security to future costs ... "

21. I was reminded by the parties that the Court of Appeal has emphasised in many cases, including *Jirehouse Capital v Beller* [2008] EWCA Civ 908, that the test under condition (c) is "reason to believe", and that it is not on the balance of probabilities.

22. Finally, during the course of submissions, I directed the parties to the decision of Master Clark in *Tulip Trading* [2022] EWHC 141 (Ch), and in particular those passages at paragraph 11 onwards in relation to the prospect of recovering indemnity costs when assessing the amount of any order for security for costs.

23. The principles usefully summarised in *Tulip Trading* by Master Clark at paragraph 13 of her judgment, are as follows:

> "(1) The applicant must show that, on all the material presently available to the court, there is reason to believe that the claimant will be unable to pay the applicant's costs if ordered to do so.
>
> (2) 'Inability to pay' means to pay when the costs fall due for payment.
>
> (3) This calls for an assessment of what the claimant may be expected to have available for payment at the due date or dates in the form of cash or other readily realisable assets.
>
> (4) The opening words 'there is reason to believe' have the effect of watering down the obligation which follows. The defendant does not have to show on a balance of probabilities that the claimant company 'will be unable to pay'.
>
> (5) The approach adopted should be simple and not 'overburdened by technical and semantic arguments relating to the construction of the "threshold test"'.
>
> (6) Where a foreign company is reticent in revealing or declines to reveal its financial position, it is 'sound' practice to grant security against it."

24. *The White Book* between paragraphs 25.13.1 and 25.13.2 identifies a number of non-exhaustive factors in the exercise of the discretion:

> "(1) The interests of justice are ordinarily best served if successful litigants recoup the costs of their litigation or

> the bulk of those costs, and unsuccessful litigants pay them;
>
> (2) security should not be ordered if it would stifle a claim, although the burden on proving that lies on the respondent;
>
> (3) the court can take into account the merits if it can be clearly demonstrated one way or the other that there is a high degree of probability of success or failure;
>
> (4) where the application is made at a late stage, that is a factor that the court should take into account; and
>
> (5) where there is a counterclaim raised where similar issues arise in relation to the claim, that is another factor that needs to be taken into account.
>
> This is not an exhaustive list of factors to be taken into account on the exercise of discretion."

25. In relation to quantum, in general terms the authorities provide that a receiving party can normally expect to recover about 60 to 65 per cent of its outward expenditure. But in cases where it is likely that indemnity costs may be ordered, the recovery can be significantly higher. That often arises in cases where there are allegations of fraud.

26. There are three stages that I must analyse in this security for costs application. Firstly, I must be satisfied that one of the conditions in CPR 25.13(2) is engaged; secondly, it must be just in all the circumstances to order the security sought; and thirdly, I have to then consider - if I am minded to go that far - the quantum, timing and appropriate form of security.

27. Turning first to the gateway, in my judgment there is reason to believe that the claimant will be unable to pay the defendant's costs if it is ordered to do so following a trial. The claimant has not provided to the

defendant or to this court evidence relating to its assets and liabilities. There is no schedule of its assets before the court. It has elected not to produce any bank statements to demonstrate its financial wherewithal. The claimant is the only party that is able to provide such evidence of its financial position. It is an overseas company. There are no filed accounts available. It has declined to provide, when asked to do so, a schedule of its assets to the defendant. Having had its attention drawn to the decision of Sales LJ in *SARPD Oil* as long ago as 5 October 2021, it has elected to not voluntarily provide any other evidence that might assist the court to determine that the claimant would be capable of meeting any costs liability. In my judgment, the correspondence to which I have been taken does evidence a deliberate reticence on behalf of the claimant to provide evidence in relation to its financial standing; evidence that could be, and often is, provided in response to applications for security for costs.

28. I have taken time through the course of the hearing to read with care the letters passing between the parties, and my judgment regarding the approach adopted by the claimant in relation to the issue of security for costs has been informed by that detailed reading of that correspondence.

29. In my judgment, there has been a degree of brinkmanship on behalf of the claimant in the way in which it has responded to the initial intimation that an application for security for costs might be made and thereafter in its position as the correspondence developed in respect of that prospective application. Indeed, the application having then been issued,

the evidence in response to the application does not - even at that late point in the chronology of the requests for security for costs – produce, for instance, management accounts, asset sheets or similar such evidence of financial standing.

30. I have carefully considered the four reasons that have been advanced by the claimant - including in counsel's helpful skeleton argument - against the conclusion that I have reached.

31. First of all, the claimant says that it owns the tureens which are in themselves an asset. There is no objective evidence before the court relating to the value of the tureens as at today's date. Moreover, there is no evidence relating to the current condition of the tureens or current market conditions in relation to the realisation of the value of assets of this type. Miss Gleyze advises me that the defendant has been invited to inspect the tureens which are currently located in London and the defendant has not availed itself of that opportunity. Miss Gleyze makes a point that the defendant is itself expert in being able to assess the likely value of the tureens as at today's date. However, that does not assist the court to form a view of the realisable value in today's market.

32. It is the claimant that wishes to persuade the court that, notwithstanding the lack of normal information (financial accounts, bank balances, etc.) it has provided sufficient information as to its financial standing by reference to this one potentially valuable antique asset. The burden in that submission therefore is on the claimant to produce some form of evidence as to the value of that asset. I have explored this with counsel.

That evidence may have been a simple and brief insurance valuation, but I am advised by Miss Gleyze that the tureens are not insured. I am told that the tureens have been placed into a third-party storage facility, and in relation to that it might have been expected that some form of valuation would have been placed on the tureens by or for the benefit of the third party who is storing the tureens. Unfortunately, I am told there is no evidence of that type before the court.

33. The only evidence that Miss Gleyze can advance before the court as to the value of the tureens is the guide price provided for them in an auction that took place in 2013. I am told that the tureens did not sell at that guide price or at any price. The information provided in relation to the guide price is of little assistance in 2022.

34. Miss Gleyze also indicates that the court can have regard to the price that the claimant was willing to pay for the tureens a number of years ago. That information does not assist the court to take matters further. A buyer can overpay for an asset for numerous reasons which I do not need to go into in this judgment. The subjective view as to value that a buyer places on an item does not assist the court years later in forming a view as to the current valuation in present market conditions. Plainly the tureens have a value, but the claimant has elected to not equip the court with any credible or reliable objective evidence sufficient to assist it to determine what that value would be.

35. There was a brief exploration - somewhat at the court's invitation - into what the value of the silver base metal comprising the tureens might be

at today's commodity rates. Unfortunately, there is no real evidence before the court as to what the current spot rate is for silver or what the quality of the silver is that comprises the tureens. There is a weight for the tureens provided in the auction catalogue. It might be - and I put it no higher than "might" - that the value of the tureens, were they melted down into metal, would only be £7,000. I record that because it seems that this value (even with a generous margin for error) does not assist the claimant in suggesting that the tureens would have an inherent minimum value when reduced to their bare state, of a magnitude sufficient to persuade the court that the claimant would be able to meet any future costs liabilities relying on this asset.

36. The claimant also argues that there are no historic defaults in relation to costs. There has, I am told, been a small costs order of £500 made against the claimant which has been met. Miss Gleyze, I think wisely, did not advance that particular submission with any real focus in her oral submissions. The fact that the claimant has been able to pay a costs order of £500 does not provide the court with any sensible form of assurance that it will be able to pay the likely costs of trial if it is unsuccessful in its claim.

37. The claimant advised the court that it is paying its own legal fees as they fall due, and the submission is accordingly advanced that the claimant is therefore of worth as it is able to meet from time to time the costs of the legal services provided by its counsel and solicitors. Again, and unfortunately, whilst I accept what I am told by Miss Gleyze that legal

fees (including her own legal fees) are being paid, there is no evidence as to who is providing that funding. The enthusiasm of a director or shareholder to ensure that a claim being advanced by a company is being prosecuted properly by lawyers acting on behalf of the company is little indication as to whether that company would ultimately be able to meet an adverse costs order following a trial.

38. Miss Gleyze also indicates to the court that *an offer* of £65,000 has been put forward as security. Miss Gleyze's submission is that the fact of an offer is sufficient evidence for a court to conclude that a respondent is not impecunious and provides reason to believe that the claimant will be able to pay the defendant's costs if ordered to do so.

39. Firstly, whilst this offer may have been advanced, there is no indication that the sum offered has been placed into, for example, the claimant's solicitors' client account or paid into court, for today. There is no evidence or indication that this money could not only be *offered*, but could in fact be provided in short order. There is no indication of where that fund is coming from. Again, it is not clear if that fund is coming from the claimant's own assets or from a third party. There is no indication also as to whether or not any sum above £65,000 is available to the claimant. The fact that £65,000 has been put forward does not, in my judgment, demonstrate (or "*give reason to believe*") that the claimant would be able to pay the defendant's costs if it was ordered to do so because it has sufficient assets to meet such a costs liability in the future.

40. Having considered the four reasons advanced by the claimant against finding that the gateway has been opened, I do not find favour with any of them. In my judgment, this is a clear case where the court is faced with an overseas company that has failed to provide any evidence of its assets and liabilities of a type that is sufficient to satisfy the court and give it reason to believe that the company is not impecunious or that it has the means to meet a costs order that may be made against it. The claimant's reluctance to provide objective evidence in support of its position, enables the court to further conclude that such evidence has not been provided because it would show that the claimant would be unable to pay the defendant's costs; that such evidence would not be supportive of the claimant's position.

41. I now have to turn to whether it is just in all the circumstances to make an order for security for costs. The principal issue advanced on behalf of the claimant is delay in the defendant issuing its applicant.

42. In my judgment it is clear - and I do not understand that the claimant argues against this - that an indication that an application for security for costs would be made was made as long ago as 20 August 2021. That is just over a month after the claim was issued. Accordingly, the claimant has been on notice since that time that it faced a prospective application for security for costs. As already indicated in my judgment, as long ago as 5 October 2021 the defendant directed the claimant to the decision in *SARPD Oil* and raised the suggestion that, in light of that decision,

disclosure of various material should be given and an offer for security should be made.

43. The claimant's position evolved into asking the defendant to provide it with a figure that would be acceptable in relation to security for costs. In my judgment, that was an entirely reasonable question for the claimant to ask at that time. Quite understandably, a claimant may not want to disclose its financial position and might prefer to take the course of agreeing a figure for security for costs.

44. Unfortunately, the defendant did not simply advance a figure that it wanted for security for costs. Rather, its correspondence remained focused on obtaining information relevant to whether or not security for costs should be ordered. That was information which the claimant was indicating it did not want to provide, with the preference being to seek agreement on a figure.

45. The claimant submits that the application for security for costs should have been issued by the end of October 2021. Putting matters simply, the claimant says that by that date it was clear that there was an impasse between the parties, and the defendant should have got on with issuing its application. Having looked at the correspondence, there is some force in that submission.

46. It has been suggested on behalf of the defendant that there were issues surrounding the pleadings and other ex parte matters that justified placing on hold a security for costs application until those matters had been resolved. I am told that pleadings closed by the end of August

2021, and it is clear in my judgment that the claimant was prevaricating in correspondence, and could have been considered to have been so prevaricating by the defendant. It is clear, in my judgment, that the defendant might have reasonably formed the view that the claimant was prevaricating in its correspondence by October 2021. It is surprising that a figure was not provided by the defendant to the claimant for security, to bring the claimant to heel. Alternatively, that the defendant did not progress matters and issue the security for costs application.

47. I do not accept that the matters that came to exercise the pleadings altered that position. The thrust of the dispute between the parties has remained broadly similar notwithstanding amendments to pleadings. Indeed, it might be thought that a defendant faced with an application to amend would be further enthused to make sure that an application for security for costs was issued before that application, not least to ensure that the applications might come on together before a court. It is not unusual for an application to amend to cause a cross application for security for costs. But that did not happen. In fact, what happened was a hiatus in the correspondence relating to security for costs between November 2021 and May 2022. The return by the defendant to the security for costs correspondence appears to have been precipitated by the claimant's application to expedite the case and for there to be a listing of a CCMC.

48. I am told that at the hearing before Miles J, the court expressed some "*surprise*" that the defendant had not simply advanced a security figure to the claimant. That observation was not in any way binding on this

court. However, having considered the matter in detail, this court shares that "*surprise*".

49. Equally, considering matters globally, it was always open for the claimant to propose a figure if the claimant wanted to avoid having to disclose its financial information. There was nothing preventing the claimant from opening the bidding in relation to a figure that it was willing to advance.

50. The defendants did issue their application for security for costs before the CCMC. As I have referred to in my judgment, that application was before the Deputy Master at the CCMC.

51. The reason that is relevant is because the guidance provided in *The White Book* refers to best practice being that security for costs applications should ideally be issued before any CCMC. So whilst there is force in the claimant's submission that the application could have been issued sooner, it was issued timeously in relation to the CCMC.

52. The issue in relation to delay has to be placed in context and to a large extent arises as an issue today because the case has been expedited. I will turn to that issue again in a moment. It was the claimant that wanted the timetable to trial to be accelerated, and the trial has now been set down next month.

53. Ordinarily, where a defendant advances a security for costs application before a CCMC, the bulk of the defendant's and claimant's costs in the case will not have been incurred before that application is determined.

One advantage is that a claimant can form a view at a relatively early procedural stage as to whether to discontinue the claim and avoid incurring their own anticipated costs and having to provide security for the defendant's costs. However, because in this case the claimant wanted the trial phases to be expedited, the vast majority of the budgeted costs have now been incurred.

54. It is, in my judgment, not appropriate to visit the fact that a case has been expedited in line with a claimant's wishes, against a defendant seeking security for costs where that application has been issued in what would be, in the ordinary course of a claim, the appropriate time, namely before the CCMC.

55. In the exercise of my discretion, I have also considered what the effect has been of any delay in issuing the application, in particular on the claimant.

56. On 11 May 2022, the claimant came to offer a sum of £65,000 as security for costs. That figure was offered in response to information provided by the defendant under an email dated 10 May 2022, where a table of costs was provided showing each phase of the litigation and a total of £184,509. In light of the claimant's offer of £65,000 as against a draft costs budget of £184,000, it is plain - and I understand the claimant to accept that it is plain - that the issue as to security for costs would not have been resolved between the parties without an application, and a court's determination.

57. Turning to the email of 11 May 2022 in which the offer of £65,000 was advanced, it is also clear that the claimant was seeking to traverse back over ground that had been raised in the defendant's correspondence in August, September, October and November 2021. The claimant said as follows:

> "Security for Costs
>
> Your client now having finally advised us of the amount of security which it seeks from our client, we have referred the matter to counsel who has requested please your client's response to the following queries:
>
> > (a) Please clarify, with specific reference to CPR 25.13(2) and the relevant subsections therein, the basis upon which your client seeks security for costs from our client; and
> >
> > (b) the grounds upon which your client asserts that it is entitled to rely upon the relevant provisions to which you refer in response to (a) above.
>
> It is unclear from your correspondence to date the basis upon which your client asserts it is entitled to security for costs from our client.
>
> Absent a response to the above, then our client cannot properly assess whether your client is entitled to seek security for costs from our client and/or, if so, the level of security which could/should properly be sought from our client."

58. The claimant, having asked for a figure in relation to the amount of security sought in October 2021 (and suggesting that if a figure could be agreed upon there would be no need for the claimant to provide the type of information that would enable a court to determine a security for costs application), then - having received a figure – undertook an about turn and returned to the issues that were engaging the parties several months earlier, at the end of 2021. This brinkmanship leads the court to conclude

that the claimant knew that its approach would make it inevitable that an application for security for costs would always have to be made, and that the claimant had notice of that likely eventuality from the earliest time.

59. It is difficult to identify, even if there was delay (properly understood) in issuing the application, what the detriment has been to the claimant arising from that delay. It is right that we are now close to trial, and the fact that a claimant is close to trial may be oppressive if that claimant is required to find a significant sum in relation to security for costs. This must be particularly the case if a security application is unheralded such that a claimant could not factor the risk of such an application (and an order being made) into its decision making processes. That is not this case. Further, as already addressed, we are only close to trial because the claimant wanted matters expedited. The claimant is the author of the chronology and the predicament in which it might now find itself. In my judgment, at the very least, it would not be fair to hold in the balancing exercise the fact and consequences of the expedition against the defendant's application.

60. Equally, in relation to any delay in listing this application before the court, that should not be weighed against the defendant in my assessment of all the circumstances. The application was issued, and directions were then given in relation to that application at the CCMC. The hope had been that the court would deal with this application in August 2022. It is unlikely that the defendant could have done anything more to accelerate the hearing of this application. The application was made

before the CCMC, and it was intimated a long time ago. The claimant should have appreciated that its approach in inter-party correspondence meant that an application would have to be made and determined. It should have prepared for such an eventuality in its approach to this claim.

61. Most importantly, when I am considering this issue (namely the detriment that might be suffered by the claimant if an order is made now and whether there would be a pressure to abandon the trial), the claimant has not advanced any evidence to suggest that it could not now readily raise security, whether the £65,000 offered or an amount above that. There is no evidence before the court to suggest that an order for security for costs would in fact be oppressive or would otherwise stifle the claimant company. The court simply does not know, for example, whether the claimant company has £1 million sitting in its bank account, or indeed whether it has a bank account, or alternatively whether it has nothing. There is no evidence that the delay caused by the court listing the hearing in October 2022 has caused some additional detriment to the claimant. Indeed, there is no evidence that the claimant has been put in a worse position than it would have been if the application had been issued in October 2021, in comparison to when it was issued in May 2022. For example, that some funding source that would have been available in 2021, has been lost to the claimant in 2022.

62. In my judgment, delay alone is not enough. It has to be accompanied by some injustice or unfairness, for example a prejudice or detriment being

caused to the responding party, in this case the claimant. The claimant has not sought to put in sufficient evidence that would assist the court in reaching such a finding.

63. If the application had been issued in late 2021 or indeed early 2022, it is more likely that it could have been dealt with at the CCMC in June 2022. In my judgment, that factor can be reflected in the quantum of any order for security for costs, and I will make an adjustment to factor in the costs incurred in and around the time of the CCMC when determining the appropriate amount of any security for costs to be ordered.

64. I reach no view on the merits of the dispute between the parties. That is, of course, the normal approach to take and I am not asked to depart from that approach by the parties. Further, there is no reason, in my judgment, to depart from that approach in this case.

65. Balancing all of the factors that I have before me, I will make an order today for security for the defendant's costs to be provided by the claimant.

66. Turning to the amount of that security, this is a case where allegations of fraud have been raised. It is certainly a case where the reputation of the defendant is called into serious question. In my judgment, there is force in the defendant's position that if the defendant is successful, indemnity costs will likely be ordered, given the manner in which the claim is advanced against the defendant.

67. Miss Gleyze understandably referred to the decision in *Tulip* where it addresses the prospect of whether an indemnity costs order may be made following a trial. In *Tulip*, the Master was dealing with a submission that the claim was speculative, weak, opportunistic or thin and, because of that, it was likely that indemnity costs would follow trial if the claim was unsuccessful. The Master noted that she was unable to form a view of the merits of the claim and therefore was unable to determine whether that claim was indeed speculative, weak, opportunistic or thin. Accordingly, the Master was unable with any confidence to form the view that indemnity costs would follow if the claim was ultimately unsuccessful.

68. That is different to the principle that I have to consider in this case, as dealt with in the authorities to which I have been referred and as summarised in *Friston*. Here, there is an allegation of dishonesty and fraud. If that case does not succeed, it is likely that it will result in an award of costs on the indemnity basis. In my judgment, in this type of case it is right to make provision for that eventuality.

69. It has been suggested, therefore, that the effect of that is that a security for costs order should be made on the basis of 80 per cent of the budgeted costs. I do not understand the defendant to be suggesting that is a hard and fast rule. However, I have been taken to authorities which suggest a figure of between 80 to 85 per cent. In my judgment, the correct approach to the amount of security that should be provided is as follows.

70. The claimant submits with force that the amount budgeted for the ADR phase needs to be taken out of the equation because there is no real prospect of alternative dispute resolution now taking place. That is accepted by the defendant. I am not asked to exclude any other phase from my assessment. Taking the approved budget of £187,000 and deducting from it the ADR phase provides, therefore, a starting position.

71. I have already indicated that I will make an adjustment to reflect some of the delay that I have found was occasioned by the defendant, which in my judgment is best measured by reference to the budgeted costs around the CCMC. I have also considered those phases in the defendant's Precedent H that were incurred and therefore not budgeted by the Deputy Master at the CCMC. However, it is not submitted that any of those phases are disproportionate or unreasonable in amount, or should otherwise be reduced down as part of my overall assessment. In any event, the sums for each "incurred" phase appear to be proportionate and reasonable.

72. I have considered, in the course of my deliberations, whether some measure of reduction should also be given because the claimant, if it had had been called to task sooner, might have settled the application or at least been in a position to more readily take a view in relation to its claim before *it* had incurred significant costs. However, there is no sufficient indication in the evidence before me that this would have been the course taken by the claimant. Put otherwise, that the claimant would have stopped spending its own money towards trial and would have

discontinued the case were it to face a security for costs order. Rather, the evidence suggests that the claimant always wanted to pursue this matter to trial and was always going to resist a security for costs application.

73. I also have regard to the fact that the defendant's Precedent H anticipated costs have already been considered and budgeted by Deputy Master at the CCMC, as being reasonable and proportionate. As such, the court can have real confidence in the defendant's approved budgeted costs as to the potential level of costs the defendant may recover (if it is successful at trial), even if an indemnity costs order is not made. In my judgment support for this can be taken from the court's approach when considering an application for a payment on account of costs which follow an order requiring an unsuccessful party to pay a successful party's costs, the final quantum of which is to be determined in the future by detailed assessment. The White Book notes, as paragraph 44.1.12:

> "The procedure contained in Section II of CPR Pt 3 for the filing, exchange, and approval by the court of the costs budgets of parties (introduced as part of the costs reforms taking effect from 1 April 2013) significantly affects the approach of the court to orders for payments on account of costs. The procedure is designed to control costs in proceedings to which it applies, to make the level of costs likely to be incurred by the parties predictable, and to restrict costs recoverable by parties to sums stated in approved budgets. In cases where the court has made a costs management order under r.3.15, the receiving party's budget, insofar as it has been agreed between the parties or approved by the court, may be a sensible starting position for determining the "reasonable sum" to be paid on account under r.44.2(8). That is because, on detailed assessment, the court will not depart from an agreed or approved budget unless satisfied that there is good reason to do so (r.3.18(b)) (see *Thomas Pink Ltd v Victoria's Secret UK Ltd [2014] EWHC 3258 (Ch); [2015] 3 Costs L.R. 463* (Birss J), where payment on account ordered in sum amounting to 90% of the claimant's approved budget)."

74. This application might have been dealt with at the CCMC, if the application was issued sooner. That would have removed the need for the discrete costs of today (or some of them). An earlier application may have also impacted the CCMC in other ways. The sums claimed by the parties' for the CCMC phase are certainly one way to approach how to adjust and reach a global security figure to account for delay. As indicated, I will make a reduction in my consideration of the appropriate figure for security for costs. I will then require 80 per cent of that figure to be provided as security, albeit I might have confidently started with 90% of the budgeted costs (less the ADR phase which the parties agree needs to be deducted), or 85 per cent of the total budget (less the ADR phase).

75. Standing back and looking at the matter globally, as I am required to do, in my judgment the correct figure for security for costs is £130,000.

(16.40)

Second Judgment

(17.14)

76. I have to now deal with the issue of costs following my judgment. The defendant has been the successful party in its application and in my judgment, in the normal way, costs should follow that event. There are no exceptional reasons for departing from that approach.

77. The claimant is right to note that at the start of the hearing one of the grounds on which the application was initially advanced - namely

Ground (a) - was abandoned or was not pressed upon the court. However, that does not mean that no costs order should follow. I have to ask myself - and I must deal with these matters briefly, given the time - whether it is appropriate to make some form of issue-based costs award or some global percentage reduction. The difficulty that the claimant faces in her submission though is that many, if not all, of the issues that the court has had to consider would have featured in the evidence in support of an application whether under Ground (a) or Ground (c). It is difficult to disentangle the two. Nonetheless, I do accept that there may need to be a slight reduction in the defendant's costs to reflect the fact that some element of its preparation - including counsel's preparation - would have been directed towards advancing Ground (a), and of course some element of the claimant's costs in preparing for today were to meet the Ground (a) application which has not been pressed.

78. In my judgment, the fair and just way to address the "Ground (a)" issue is to factor a reduction into the defendant's costs in relation to the today's application (which I have not yet seen). It remains in my judgment that whilst there has been to a limited degree success by the claimant in relation to the "Ground (a)" point in the application notice, the success overall in the application has been with the defendant. The application has been fully opposed, and the principle that security should be provided has been opposed from Day 1 by the claimant. That stance has caused considerable costs to have been run up. As I indicated in my judgment, the claimant should have appreciated that due to its position and conduct, it was always going to be the case that this application

under one of the grounds - if not both - was going to have to be made. Plainly, a costs order needs to be made in favour of the defendant.

79. I do not follow the claimant's counsel's argument that a costs order on this application "annihilates" the fact that I have made a reduction in the amount I would have otherwise ordered in respect of the security for costs ordered. Firstly, the sum budgeted for the CCMC phase (which I focused on to provide a guide (including as to the claimant's costs for that phase) as to the appropriate reduction to reflect delay, is separate and discrete to the costs on this application. Whilst I assessed a reduction to the amount of security (to address delay) by reflecting (in part) on the costs implications if the application had been made earlier, (such that the application could have been dealt with at the CCMC and therefore this hearing (and some of its costs) might have been to some extent avoided), that is not the same as concluding that no costs should be ordered in this application.

80. Secondly, the claimant still has the benefit of not having to pay as much as it would otherwise have had to have paid in relation to security for costs ordered (that benefit is not "annihilated"). Accordingly, the risk of the unless order (which will attach the usual sanction to the requirement to provide security) biting is therefore in relation to a lower amount. It remains that a discrete order for costs should be made in relation to the application. However, non-payment of that costs order will not, of course, trigger the unless sanction that applies in relation to the security for costs figure.

81. I have not been addressed on the time by which any costs order in relation to the application should be met, whether it is the normal 14 days, or a longer period of 28 days. However, whatever the timeframe for that payment, once it passes, if the sum has not been paid, that does not mean that the consequences of the security for costs order will be triggered.

82. So the approach taken to *the quantum* in relation to the security for costs order is not somehow "annihilated" (as counsel put it) by the fact that a costs order needs to be made in relation to this discrete application.

83. Nor is any delay - if there has been any when considered in context - in bringing the application a reason not to order costs in the application. The delay was a factor I took into account in all the circumstances when determining whether or not to make an order and in what amount and on what conditions. There has not - in the sense that the application was made before the CCMC - been any relevant delay that should influence my view on the costs consequences in the successful application notice.

84. The application has been resisted unsuccessfully (albeit with great force), and in the normal way costs should follow the event in the application notice.

(17.20)

Third Judgment

(17.32)

85. I now have to determine the appropriate quantum of costs to order following my decision that the claimant should pay the defendant's costs in this application.

86. I have already indicated that as part of that assessment I needed to form a view on the amount of costs by reference to work that may have been expended in dealing with submissions and written evidence in support of that ground for security for costs which is no longer pursued. In my judgment it would not be fair or just for the claimant to have to pay the full amount of the costs sought including for that reason.

87. A number of challenges are made to the quantum sought in the defendant's schedule of costs, which is in the sum of £18,790.50. The addition of VAT, although shown on the schedule of costs, is not sought today.

88. The first global objection, and the first occasion when this fact has been highlighted, is that the costs for the (at that stage anticipated) application were budgeted at the CCMC by Deputy Master Bowles in the grand total of £12,000. The claimant says today that I cannot trespass outside of that figure by making an award of costs that is in excess of £12,000. The claimant was unable to take me to any authority for that proposition, or to any guidance as to how a discretion might be exercised.

89. There is objection taken to the hourly rates applied for the Grade A and Grade D fee earners. There is objection taken to the hours recorded for attendance at the hearing today by the Grade A fee earner on the basis that his attendance was not required. There is objection taken to the

work done on documents. In particular, it is suggested that the time spent on preparing the bundle and on reviewing counsel's skeleton argument is high. There is a general suggestion that more work should have been delegated to the Grade B fee earner.

90. Turning to all of these matters, and given that it is now 5.35pm, I must keep this part of my judgment short.

91. The exercise of my discretion in relation to costs is wide. Costs are sought on the standard basis. I have had regard to Part 44, and in particular the guidance in the White Book following Rules 44.1, 44.4, and 44.6.

92. The bare observation that I am somehow absolutely restrained by the budgeted costs is not, in my judgment, well-founded. Plainly, even at the point of assessment following a trial, cost judges can depart from a costs management order if they consider that there is a good reason to do so. Further, Rule 3.15A provides for a revision to an approved budget if "*significant developments in the litigation warrant such revisions*". The notes to the White Book provide examples where "significant developments" have been found, which include an increase in the anticipated length of a hearing or trial, or an increase in complexity of the anticipated dispute.

93. In my judgment, applying those concepts there is a "good reason" in this case.

94. There is support for my "good reason" approach in the White Book at paragraph 3.17.2 which states:

> "At the conclusion of any interim application the court has a discretion as to whether one party should be ordered to pay the costs of another party; if such an order is made the court also has a discretion as to the amount of costs to award and the date by which they must be paid (r.44.2(1)).
> In the case of an interim application made after a costs management order has been made, if an award of costs on the standard basis is appropriate (r.44.3) the court must have regard to the receiving party's last approved or agreed budget (r.3.18(a)). If the costs of the application in question were included in that budget the court should not depart from it **unless there is good reason to do so** (r.3.18(b)). If the costs of application in question were not included in the budget, a question arises as to whether they should have been included. The court may make an award of costs to be paid (in addition to any budgeted costs the receiving party may later be awarded) only if it considers that the receiving party had acted reasonably in not including that application in its budget (r.3.17(4)).

95. I first note that I have been the judge dealing with the application and I am best placed to now assess what the appropriate, reasonable and proportionate costs have been of that application as finally argued by both parties. This allows me to form a qualitative assessment of what was anticipated before the defendant's costs budget was approved, and what has in fact transpired

96. Since the costs budget was approved, there has been an exchange of further evidence and considerable work done in relation to that further evidence. The complexity of the application has significantly developed.

97. Further, the Application Notice provided for a time estimate of two hours, and the notice of hearing gave a listing of half a day (2.5 hours).

The budgeted costs would have reflected the anticipated hearing length. In fact, the application has occupied the court and the parties for a full day (and the parties' costs may have escalated yet further if the court had not be willing to work through lunch and to sit late, but had rather adjourned the hearing part heard). In no small part, that increase in hearing length is because the claimant has elected to argue all issues, regardless of merit. The claimant is entitled to adopt that approach, but it has certainly increased, for example, the defendant's solicitors time costs of attending today's hearing.

98. I recognise the claimant's submission that the court had anticipated that there would be a further round of evidence at the CCMC in relation to the security for costs application. However, the court could not have known, and indeed the parties could not have known, how far or how deep that evidence would go, and how much work would ultimately be required in relation to it; not least in responding to evidence that was filed on behalf of the claimant. That has all now crystallised into the hearing bundle, as has the claimant's intention to approach the application by taking every point, regardless of merit.

99. In my judgment there is a good reason for departing from the budgeted costs. This court is now well placed to form a very clear view on what are the reasonable and proportionate costs of today's hearing in light of the events that have transpired since the CCMC, namely the extensive submissions that have been maintained on behalf of the claimant and the manner in which the claimant has objected and continued to object to the

application for security for costs. The claimant has taken every point - as it is entitled to do - in resistance to the application for security for costs, but without regard to merit or the increase in time (and therefore cost) burden of that conduct. It must now meet the costs caused by that approach.

100. The discrete issues on which objections are taken first of all are in relation to the guideline rates for fee earners. In my judgment, they do not assist me today, save to say that the sums that are being sought by the defendant's fee earners when adjusted - including for inflation, since the guideline rates were published in October 2021 - do not in my judgment fall far outside of the guideline rates. In any event, they are only guideline rates. This is a serious litigation being conducted in the Chancery Division of the High Court, and the hourly rates claimed are not out of the norm for the provision of legal services in this court and in a case which raises serious reputational issues and allegations of fraud. It is the claimant that wanted his case to be determined in the Chancery Division, and it is the claimant that has wanted its case to be expedited. In my judgment, it was reasonable and proportionate for the defendant to use solicitors of the calibre that they have engaged in relation to the nature of the case brought, and for those solicitors to be charging out at the rates shown on the statement of costs. Accordingly, I am not going to adjust down the hourly rate.

101. As regards the attendance at hearing, again it is not unusual in this division for solicitors to attend on counsel, particularly in important and

heavily contested applications such as this; an application that has occupied the court all day. It was plain during the course of the hearing that the solicitor in attendance on behalf of the defendant (who ultimately has the task of carrying the application), was useful to counsel who has on a number occasions needed to pause to take instructions. If counsel had needed to leave court to make telephone calls to his instructing solicitors to obtain instructions, there would have been even more delay to today's hearing and the use of the court's resources (and the risk of a costly further day being required to conclude the hearing). In my judgment, it was reasonable and proportionate for the solicitor on behalf of the defendant to attend court today and lend his services to counsel and the court.

102. In relation to the discrete points on the work done on documents, I pause first to note that when looking at each category of work undertaken in relation to today's hearing, I am not only interested in the number of hours spent and the rate at which those hours are charged. I am also concerned with the total sought for each phase of work, and the overall total of costs sought in the application.

103. In relation to each phase of work, it is often the case that time spent by a more experienced (and expensive) fee earner is less than would be spent dealing with the same item of work by a less experienced (and cheaper) fee earner. This means that the total sum being claimed for a phase of work would be similar if not the same, given the fact that more hours would be spent at a lower rate as opposed to fewer hours at a higher

rate. Therefore, it is not always useful to simply identify the fact that work might have been undertaken by a lower grade of fee earner, because that ignores the fact that the higher grade fee earner may have been more efficient (due to experience) with their time.

104. Turning to the work done on documents, the total sought is £7,724.50. This comprises, in the main, work on the third witness statement in support of the application, reviewing a fourth witness statement, and preparing a bundle for today. In my judgment, having considered those documents and the bundle, the sums claimed in relation to each of the items of work done on documents is reasonable and proportionate. The total sum of £7,724.50 is reasonable and proportionate for an application of this sort. I do not, for example, consider that seven and a half hours on the third witness statement in support of the application is excessive when split at five hours at Grade B and two and a half hours at Grade A giving a total of £2,325. It is clear that considerable work went into that witness statement. It may well have been that a Grade C or D fee earner could have been involved as well, but no doubt they would have spent more time than, for example, the Grade B fee earner in undertaking the task.

105. It is unclear if objection is taken with counsel's fee for the hearing today. The sum sought is £4,500. In light of the nature of the application today and the issues involved and the extensive argument needed, is not unreasonable and it is proportionate.

106. Having stood back and looked through the statement of costs, there is nothing which strikes me as being objectionable, unreasonable or disproportionate.

107. In relation to the attendance at hearing today, four hours was sought at £400 an hour. There is a request to increase the number of hours and costs to take account of the fact that the solicitor has been present for at least seven hours today at court.

108. Taking a broad-brush approach, as I must ultimately do, to the £18,790.50 sought, my starting position is that the right figure for an application of this sort - taking account of the fact that perhaps there are areas where slightly less time might have been spent, but adding back in the length of the hearing today - is to reach a figure of £18,000.

109. However, as I indicated before, there must be a measure of adjustment, in my judgment, for work that was undertaken in relation to advancing Ground (a), a ground that at the start of the hearing was not pursued. Again, I must take a broad view on what that adjustment should be, given the fact that I am not asked by either party to order a detailed assessment and I am rather being asked by the parties today to summarily assess the costs late in the day. As I have already indicated, there is considerable overlap between the evidence that was required to be dealt with today under Ground (a) or Ground (c), but there has clearly been work done in dealing with Ground (a), at least in the discrete submissions required by counsel in written advocacy on either side in relation to this point. I will

therefore, accordingly, reduce the sum down to £14,000 to take account of that factor.

110. The parties' counsel will need to carefully formulate a final draft order that accommodates the intentions expressed in my discrete judgments , that can now be taken together, including in relation to the quantum of the security required and the discrete costs ordered in the application.

(17.47)
