



Neutral Citation Number: [2020] EWHC 1945 (Ch)

Case Number CR-2017-003729

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)
IN THE MATTER OF PARAGON OFFSHORE PLC (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 20/07/2020

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO QC

B E T W E E N :

- (1) **NICHOLAS GUY EDWARDS**
(2) **DAVID PHILIP SODEN**
(3) **NEVILLE BARRY KAHN**

(the Former Administrators of Paragon Offshore plc (in liquidation))

Applicants

And

MICHAEL R. HAMMERSLEY

Respondent

Mr Mark Arnold QC (instructed by Weil Gotshal & Manges (London) LLP) for the
Applicants

Mr Michael Hammersley, acting in person

Hearing dates: 23 April 2020, 11 May 2020 and 22 May 2020

JUDGMENT ON COSTS

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and released to Bailii. The date and time for hand-down is deemed to be 10.30 am on 20 July 2020.

Introduction

1. On 23 April 2020, 11 May 2020 and 22 May 2020, I heard the application seeking the discharge of the Former Administrators ('the discharge application') of the above-named company ('Paragon'). I reserved judgment and on 8 July 2020, I circulated the judgment ('the discharge judgment') in draft and directed that Counsel on behalf of the Applicants provide by 4 pm on Tuesday 14 July 2020 a list of typographical errors and other obvious errors. I dispensed with the obligation upon Mr Hammersley, who is acting in person, from having to provide a list. I also directed that written submissions relating to the costs of the application should be provided to me in writing with the following timetable. Any written submissions as to costs were to be filed and served by 4 pm on Tuesday 14 July 2020 on behalf of the Applicants and any written costs submissions by Mr Hammersley were to be served and filed by him by 4 pm on Friday 17 July 2020.

2. On Tuesday 14 July 2020 the written costs submissions on behalf of the Applicants were filed and the covering email indicated that the list of typographical and other errors, the written submissions to costs as well as a proposed draft order were in the process of being served upon Mr Hammersley. By email dated 14 July 2020 (timed at 18.24) Mr Hammersley sent an email addressed to my Court Clerk and also to Leading Counsel on behalf of the Applicants, Mr Mark Arnold. The email indicated that Mr Hammersley intended to submit an application pursuant to Insolvency Rule 12.59 asking the Court to consider the highlighted portions of certain attached documents with respect to the issue of discharge of the intercompany claims. On 17 July 2020 Mr Hammersley served his written submission as to costs as well as a proposed draft order. This judgment relates to the issue of costs. I have read and considered the written submissions made which I will refer to them in this judgement.

3. As is set out in the discharge judgment, I determined that none of Mr Hammersley's grounds for objecting to the discharge of the Former Administrators

pursuant to paragraph 98(2)(c) of Schedule B1 of the Insolvency Act 1986 had any merit. In my judgment, the Applicants as the Former Administrators, were entitled to an order for their discharge under the relevant provision. Mr Arnold submits that the general rule that costs follow the event should be applied and accordingly that I should make an order that Mr Hammersley pay the costs of and occasioned by the application from 12 March 2020. The date of 12 March 2020 is the date that the application was before Deputy ICC Judge Barnett when Mr Hammersley was formally joined as a Respondent to the discharge application. The Deputy Judge warned Mr Hammersley on that day of the possibility of an order for costs being sought against him in the event that his opposition was unsuccessful. Mr Arnold also refers me to correspondence sent by solicitors acting on behalf of the Applicants reserving the right of the Applicants to seek an order for costs against Mr Hammersley. Additionally, at each hearing of this application, a statement of costs was served on behalf of the Applicants upon Mr Hammersley and he was also reminded of the intention of the Applicants to seek an order for costs.

4. In his written submissions, Mr Hammersley opposes any order for costs being made against him. Alternatively, he invites me to adjourn the application for costs until the Court can consider the application of Mr Hammersley pursuant to Insolvency Rule 12.59 to review, vary, rescind or vary the draft judgment or for permission to appeal. Currently no such application appears to have been issued seeking to review vary or rescind. However, in any event in my judgment, there is no jurisdiction to review, vary or rescind a draft judgment. Rule 12.59 enables an application to review vary and or rescind an order of the Court. The order of this Court is made on the day that the judgment is handed down, being 20 July 2020. In relation to the reference in his submissions to seeking permission to appeal, I have no submissions from Mr Hammersley relating to such an application for permission to appeal. I will not therefore deal with such an application for permission to appeal in this judgment.

5. In my judgment, I am not prepared to adjourn the application made as to costs. The discharge application has taken some considerable time to be heard before me. Mr Hammersley enlarged his grounds of objection to the discharge of the Former Administrators and applied and was granted by me permission to rely upon further evidence. As set out in the discharge judgment, his application lacked merit and I

granted the discharge application. Accordingly, I am not prepared to adjourn the application made by the Applicants for an order for costs as against Mr Hammersley. Mr Hammersley has had, as I set out above, ample warning that such a costs application could be made in the event that Mr Hammersley was unsuccessful in his objections to the discharge. Moreover, there is in my judgment, no real grounds provided by him as to why there should be any delay in the consideration by me of the costs application. Even if an application pursuant to rule 12.59 is made by Mr Hammersley, he would need to satisfy the Court that the order made by me should be reviewed varied and/or set aside. There is no reason to delay costs considerations based upon an application to be made at some time in the future.

6. Mr Hammersley also submits that, in the event that if I am not prepared to adjourn the application for costs, he opposes the making of an order against him on numerous grounds. Firstly, he asserts that he had tried to settle these claims years ago on terms which he asserts were reasonable. However, the fact remains, whatever those proposed terms were, Mr Hammersley has lost his attempt to prevent the discharge. It is, in my judgment, irrelevant as to what proposed terms he considers were reasonable when he asserts he attempted to settle this matter. Mr Hammersley elected to be joined as a respondent to this application. He was made aware on numerous occasions that there may well be costs consequences. The Applicants have been successful so it appears any issue relating to proposed or attempted settlement is not relevant to the issue of costs before me. Secondly, Mr Hammersley asserts that some of the Applicants' claims were frivolous. He relies upon his proposed application pursuant 12.59. As the discharge judgment makes clear, I held that there was no merits in any of the grounds presented by Mr Hammersley. I dealt with the application made by the Applicants seeking their discharge and considered the evidence presented by both parties which was before me. There was in my judgment no evidence of any alleged frivolous claims presented to me on behalf of the Applicants.

7. Mr Hammersley asserts that the delays were in some way caused by the Applicants because of some failure to file the Loan Note Instrument. In my judgment, there is no merit in this ground either. Mr Hammersley elected to add to the grounds he raised issues relating to the Loan Note Instrument. He lost on those grounds as well as the others. Mr Hammersley relies on the Applicants having budgeted for opposition

to the application to discharge and therefore they cannot complain when a shareholder exercises its rights. I reject this as a ground as well. Orders for costs are within the discretion of the Court. Whether or not Applicants have been careful and sought to costs budget for likely opposition to an application does not in my judgment prevent an order for costs being made in favour of the Applicants. Fifthly, Mr Hammersley asserts that the usual order for costs would be that the costs are effectively paid out of the estate of Paragon. Mr Hammersley then seeks to rely on some unsubstantiated alleged conflicts of interests by the Applicants. In my judgment, the Court has the discretion to direct that costs, or part of them, be paid out of an insolvent estate, but this does not prevent the Court from directing that a particular party be liable for the costs or part of them. In this case, the opposition of Mr Hammersley caused what should have been a fairly straightforward application, to occupy this court for a considerable period of time. For the avoidance of doubt, I reject the allegation made by Mr Hammersley relating to conflicts of interest. This is an unsubstantiated allegation raised by Mr Hammersley. It has no bearing on the issue of costs in relation to the matters heard before me. Sixthly, Mr Hamersley relies upon an assertion that the Applicants cannot deny that there is merit in his objections because of a communication relating to litigation risk. As I have pointed out above, I have held that none of the grounds and objections raised by Mr Hammersley had any merit. In my judgment what is relevant is that the Applicants succeeded in the discharge application.

8. Having considered the objections to any order for costs raised by Mr Hammersley, in my judgment, this is a case where costs should follow the event. I see no reason not to make an order for costs against Mr Hammersley. He decided to contest the discharge application. He lost on all of the grounds he raised. Accordingly, I will make order that the costs of the Applicants to be paid by Mr Hammersley from the date identified by Mr Arnold, being 12 March 2020. Such costs are to be assessed on a standard basis.

9. Mr Arnold invited me to summarily assess those costs. He submits that although the matter has occupied the Court for more than a day overall, as the Judge who has heard the case over the three day period, I am the person best placed to deal with the costs issue and to be able to determine whether those costs are reasonable and

proportionate. Although I have considerable sympathy with the position of the Applicants, the sums being sought are substantial. In my judgment, it is appropriate that this matter be the subject of a detailed assessment in the usual way.

10. I am prepared and do make an order that Mr Hammersley do pay the sum of £116,008.14 plus VAT of £23,201.63 on account of those costs. That is a value of 60% of the overall costs schedule and in my judgment, it is an appropriate sum to direct as a payment on account. Finally Mr Arnold seeks in his draft order a direction that the costs which are irrecoverable from Mr Hammersley (relating to the period prior to 12 March 2020 as well as those incurred after that date but where these are not paid by Mr Hamersley) to be paid as an expense out of the property of which the Applicants as Former Administrators has custody and control immediately before cessation of their appointment as Former Administrators. I make that order as well.

Dated