Neutral Citation Number [2024] EWHC 1302 (Ch)

CR 2023 005719

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

IN THE MATTERS OF INVENIA TECHNICAL COMPUTING CORPORATION (Company No. 659809) AND INVENIA LABS LIMITED (Company No 09668180)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 07/06/2024

Before :

ICC JUDGE BARBER

- -

Between :

(1) INVENIA TECHNICAL COMPUTING CORPORATION
(2) INVENIA LABS LIMITED

Applicants

- and –

MR MATTHEW HUDSON

Respondent

- -

Mr Ram Lakshman (instructed by **Mishcon de Reya LLP)** for the **Applicants**
The Respondent appeared in person

Hearing dates: 30 January and 14 February 2024

- -

Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 4.30pm on 7 June 2024

ICC Judge Barber

1. At hearings on 30 January and 14 February 2024, I heard submissions on the costs of a number of related applications. The applications were as follows:

(1) the Applicants' application dated 11 October 2023 to restrain the presentation of a winding up petition based on five Statutory Demands dated 7 September 2023 (the **'**Statutory Demands**'**) served by the Respondent on the Applicants (the **'**Injunction Application**'**), which was granted by this court at a hearing on 13 December 2023 ('the 13 December hearing');

(2) the Respondent's Application dated 25 October 2023 for relief from sanctions in relation to the late filing and service of his evidence in response to the Injunction Application (the **'**First Relief from Sanctions Application**'**), an application that came before ICC Judge Mullen unopposed on 27 November 2023 and on which ICC Judge Mullen made no order save that the costs of the application would be costs in the Injunction Application;

(3) the Respondent's Application dated 17 November 2023 seeking (among other things) an adjournment of the hearing of the Injunction Application (the **'**Adjournment Application**'**), which was dismissed at the hearing before ICC Judge Mullen on 27 November 2023, with costs ordered to be costs in the Injunction Application;

(4) the Respondent's Application dated 24 November 2023 to strike out the Injunction Application (the 'Strike Out Application**'**), which was dismissed at the 13 December hearing and marked totally without merit;

(5) the Respondent's Application dated 4 December 2023 for an extension of time to file and serve his evidence in response to the Injunction Application (the **'**Extension Application**'**), which was dismissed at the 13 December hearing; and

(6) the Respondent's Application dated 12 December 2023 for relief from sanctions in relation to the late filing and service of evidence in response to the Injunction Application (the **'**Second Relief from Sanctions Application**'**), which was dismissed at the 13 December hearing.

I shall refer to these applications collectively as 'the Applications'.

2. On 14 February 2024, at the conclusion of submissions, I ordered (in summary) as follows:

(1) that the Respondent shall pay the Applicants' costs of and occasioned by the First Relief from Sanctions Application, the Adjournment Application, the Extension Application and the Second Relief from Sanction on the standard basis; and that

(2) subject to (1), that the Respondent shall pay the Applicants' costs of and occasioned by the Injunction Application and the Strike Out Application on the indemnity basis;

in each case subject to detailed assessment if not agreed.

3. I also granted interim costs of £37,807, to be paid on account of the foregoing costs orders by 4pm 13 March 2024.

4. Due to lack of court time, I made the foregoing orders on the basis that written reasons would follow. This judgment sets out my reasons for making the orders.

Legal principles

5. The legal principles that the court applies when considering an application for costs were largely uncontroversial.

6. The general rule is that costs follow the event; the unsuccessful party will be ordered to pay the costs of the successful party, although the court may make a different order: CPR 44.2(2).

7. To be considered the 'successful' party on an application, it is necessary only to succeed on the application overall; it is not necessary to succeed on each individual issue: Kastor Navigation Co Ltd & others v AXA Global Risks (UK) Ltd & Ors [2004] EWCA Civ 277 at [143]. As explained by Sir Thomas Bingham MR in William Roache v News Group Newspapers Limited [1998] EMLR 161 (CA), in determining who is the successful party,

> 'The judge must look closely at the facts of the particular case before him and ask: who as a matter of substance and reality has won? Has the plaintiff won anything of value which he could not have won without fighting the action through to a finish? Has the defendant substantially denied the plaintiff the prize which the plaintiff fought the action to win?'

8. In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including the matters set out at CPR 44.2(4) and (5).

The impact of a refusal to engage in ADR

9. The court may deny a successful party their costs if they unreasonably refuse to participate in mediation: Halsey v Milton Keynes NHS Trust [2004] EWCA 576. As confirmed by Dyson LJ at [13] in Halsey, however:

> 'In deciding whether to deprive a successful party of some or all of his costs on the grounds that he has refused to agree to ADR, it must be borne in mind that such an order is an exception to the general rule that costs should follow the event. In our view, the burden is on the unsuccessful party to show why there should be a departure from the general rule. The fundamental principle is that such departure is not justified unless it is shown (the burden being on the unsuccessful party) that the successful party acted unreasonably in refusing to agree to ADR.'

10. At [16], Dyson LJ went on to confirm that the question whether a party has acted unreasonably in refusing ADR must be determined having regard to all the circumstances of the particular case. Factors which may be relevant to the question whether a party has unreasonably refused ADR will include (but are not limited to):

    (1) the nature of the dispute;

    (2) the merits of the case;

    (3) the extent to which other settlement methods have been attempted;

    (4) whether the costs of the ADR would be disproportionately high;

    (5) whether any delay in setting up and attending the ADR would have been prejudicial; and

    (6) whether the ADR had a reasonable prospect of success.

11. The subject matter of some disputes renders them intrinsically unsuitable for ADR. These may include cases involving allegations of fraud or other commercially disreputable conduct against an individual or group: Halsey at [17].

12. The fact that a party reasonably believes that he has a strong case is relevant to the question whether he has acted unreasonably in refusing ADR. As observed by Dyson LJ in Halsey at [18]:

> 'If the position were otherwise, there would be considerable scope for a claimant to use the threat of costs sanctions to extract a settlement from the defendant even when the claim is without merit. Courts should be particularly astute to this danger.'

13. Some cases are clear-cut. A good example is where a party would have succeeded in an application for summary judgement pursuant to CPR 24.2. Other cases are more borderline. In truly borderline cases, the fact that a party refused to agree to ADR because he thought that he would win should be given little or no weight by the court when considering whether the refusal to agree to ADR was unreasonable: Halsey at [19].

14. Where the costs of mediation would be disproportionately high, it may be reasonable for a litigant to refuse to incur them. Similarly, where acceptance of mediation may have the effect of delaying the trial of the action, this is a factor which it may be relevant to take into account when deciding whether a refusal to agree to ADR was unreasonable: Halsey at [21]-[22].

15. The burden should not be on the refusing party to satisfy the court that mediation had no reasonable prospect of success. As put by Dyson LJ in Halsey at [28] (with emphasis added):

> 'the fundamental question is whether it has been shown *by the unsuccessful party* that the successful party unreasonably refused to agree to mediation.'

16. Where a successful party refuses to agree to ADR despite the court's encouragement, that is a factor which the court will take into account when deciding whether his refusal was unreasonable: Dyson LJ at [29].

17. Mr Hudson also referred me to the cases of Dunnett v Railtrack [2002] ALL ER 850, Hurst v Leeming [2003] 1 Lloyds' Rep 379, Royal Bank of Canada v Secretary of State for Defence [2003] EWHC 1841 (Ch) and Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416. In the interests of brevity, I will not address them all in this judgment, but confirm that I have considered the same and take their guidance into account.

Basis of costs

18. Where the court makes an order for one party to pay the costs of the other, it may assess those costs on either the standard basis or the indemnity basis: CPR 44.3(1). The making of a costs order on the indemnity basis will be appropriate in circumstances where the conduct of the parties or other particular circumstances of the case (or both) are such as to take the situation 'out of the norm' in a way which justifies an order for indemnity costs: Excelsior Commercial and Industrial Holdings Ltd [2002] EWCA Civ 879 at [31] and [39] per Lord Woolf LCJ and Waller LJ respectively. The word 'norm' is intended to reflect something outside the ordinary and reasonable conduct of proceedings': Verlox International Ltd v Antoshin [2022] EWHC 3182 (Comm) at [21].

19. It is an abuse of the court process to present a winding up petition, or threaten to present a winding up petition, in circumstances where there is a genuine and substantial cross-claim or where there is a bona fide dispute as to whether the debt is owed: Coilcolour Ltd v Camtrex Ltd [2015] EWHC 3202 (Ch) at [33]-[34]. Where the court grants an injunction to restrain presentation of a winding up petition, the respondent thus runs a fairly high risk of being ordered to pay indemnity costs: Re A Company (No 0012209 of 1991) [1992] 1 WLR 351 at 354 per Hoffmann J.

Relevant procedural background

20. The five statutory demands were served on 11 September 2023. At the time that they were served, there were already ongoing proceedings brought by the Applicants against Mr Hudson in the Kings Bench Division, claim number KB 2022 0004857 ('the Kings Bench Proceedings'), following termination of Mr Hudson's employment with the Applicants on 13 October 2022. The Kings Bench proceedings are substantial, involving claims against Mr Hudson totalling £11.5 million. The allegations against Mr Hudson in those proceedings include allegations of breach of fiduciary duty and misappropriation of assets. All such allegations of wrongdoing are contested by Mr Hudson. There are lengthy and detailed pleadings settled by leading counsel on each side.

21. It was against that backdrop that the five statutory demands, all dated 7 September 2023, were served. These were as follows:

(1) A statutory demand against the Second Applicant ('Labs') in the sum of £31,500 (the 'Labs Demand');

(2) a statutory demand against the First Applicant ('ITC') in the sum of $26,121.08 (the 'TPS Demand');

(3) a statutory demand against ITC in the sum of $1million (the 'Severance Payment Demand');

(4) a statutory demand against ITC in the sum of £1,103,323 (the 'Indemnification Agreement Demand'); and

(5) a statutory demand against ITC in the sum of $89,467,995.08 (the 'Share Repurchase Demand').

22. The Applicants' solicitors, Mishcon de Reya, responded to the Statutory Demands by a six-page letter dated 26 September 2023, sent under cover of an email to Mr Hudson timed at 10.57 am and marked for his urgent attention. Among other things, the letter:

(1) made reference to the Kings Bench proceedings and summarised why the demands were disputed;

(2) explained that it was an abuse of process to present a petition based on a disputed debt;

(3) demanded confirmation by 5pm that day (26 September 2023) that the demands were withdrawn and that no winding up petitions would be presented;

(4) warned that in the absence of such confirmation, the Applicants would seek injunctive relief and indemnity costs against Mr Hudson;

(5) stated that if Mr Hudson was in any doubt about his legal position, he should seek independent legal advice as a matter of urgency.

23. Mr Hudson did not provide unconditional confirmation that the statutory demands would be withdrawn, whether by the initial deadline or the extended deadline subsequently agreed between the parties. After several rounds of correspondence between the parties, by letter dated 6 October 2023 sent by email to the Applicants' solicitors, Mr Hudson gave the Applicants' 'three business days' notice' of his intent to present winding up petitions against the Applicants.

24. Accordingly, on 11 October 2023, the Applicants issued the Injunction Application. In relation to the First Applicant (which is not a company registered in England and Wales), the Injunction Application sought a declaration or ruling that the court had no jurisdiction to make a winding up order against it and, in the alternative, an order restraining presentation. In relation to the Second Applicant, the application sought an injunction restraining presentation. Indemnity costs were sought by both Applicants.

25. The Injunction Application was listed for hearing on 12 October 2023 on an urgent basis for interim relief.

26. Following issue of the Injunction Application, Mr Hudson agreed to interim injunctive relief. The court granted interim injunctive relief on 12 October 2023 and (among other things) directed that the final hearing be listed on an expedited basis,

setting out a timetable for evidence. The final hearing was subsequently listed on 13 December 2023.

27. In the meantime, Mr Hudson set about issuing a series of his own applications. On 12 October 2023, he issued an application for a direction for cross-examination (the 'Cross-Examination Application'). On 25 October 2023, Mr Hudson issued the First Relief from Sanctions Application. On 15 November 2023, Mr Hudson issued a specific disclosure application ('the Disclosure Application'). On 17 November 2023, Mr Hudson issued the Adjournment Application. On 24 November 2023, Mr Hudson issued the Strike-Out Application.

28. A number of these applications were dealt with by ICC Judge Mullen on 27 November 2023. At that hearing, ICC Judge Mullen dismissed the Disclosure Application with indemnity costs, dismissed the Cross-Examination Application (marked totally without merit) with indemnity costs, and dismissed the Adjournment Application with costs in the Injunction Application. He made no order on the First Relief from Sanctions Application save that the costs of the same be costs in the Injunction Application. He also varied the timetabling for evidence on the Injunction Application (already listed for hearing on 13 December 2023) and directed that the Strike Out Application be listed to be heard at the same time as the Injunction Application.

29. In giving judgment on 27 November 2023, ICC Judge Mullen observed that:

> 'Far too many words and pages have been generated in this matter and it really should not have taken as much time as it did.
>
> There is a lack of regard to dealing with the application proportionately, we have had applications flying out of the woodwork in no particular order - the cross-examination application first, followed by disclosure, followed by the application to adjourn the application to strike out.
>
> There has been a loss of a proper sense of proportion as a whole …'

30. Following that hearing, Mr Hudson issued two further applications: the Extension Application, issued on 4 December and the Second Relief from Sanction Application, issued on 12 December. These were listed to be heard at the 13 December 2023 hearing.

31. At 9.55pm on 12 December 2023, Mr Hudson then unconditionally withdrew two of the Statutory Demands, namely, the Share Repurchase Demand in the sum of $89,467,995 and the Severance Payment Demand in the sum of $1 million.

32. At the hearing on 13 December 2023, the court concluded that

(1) the First Applicant was an unregistered company which was subject to the jurisdiction of the court pursuant to Section 221 of the Insolvency Act 1986;

(2) the debts of £1,103,323 and £31,500 claimed in two of the three remaining 'live' Statutory Demands (the Indemnification Agreement Demand and the Labs Demand) were each the subject of a bona fide dispute on substantial grounds;

(3) the debt of US26,121.08 claimed in the TPS Demand had not been shown on the evidence before the court to be disputed on substantial grounds, but that in any event:

(4) the Applicants had demonstrated a genuine and substantial arguable cross-claim in a sum exceeding the total of all sums claimed in the three 'live' Statutory Demands remaining.

33. At the hearing on 13 December 2023, the court also (1) dismissed the Strike out Application marked totally without merit, (2) dismissed the Extension Application and the Second Relief from Sanctions Applications; and (3) granted final injunctive relief in favour of both Applicants.

34. The issue of costs was adjourned to 30 January 2024. As the 45 minute time estimate for that hearing proved inadequate, the costs hearing was then adjourned part-heard to 14 February 2024.

The parties' positions on costs

35. The Applicants maintained that in accordance with the usual rule, costs should follow the event and that Mr Hudson should be ordered to pay its costs of each of the Applications. In addition, the Applicants contended that Mr Hudson should pay the costs of the Injunction Application, the Strike Out Application, the Extension Application and the Second Relief from Sanctions Application on the indemnity basis.

36. Mr Hudson's primary position was that the court should make no order for costs in relation to any of the Applications. He also submitted that if, contrary to his primary position, the court was minded to award any costs against him, such costs should be on the standard rather than indemnity basis. He resisted any order for interim costs.

The successful party

37. In relation to the Injunction Application, the Applicants were plainly the successful parties. Mr Hudson sought to argue that the Applicants were only partially successful, in that their injunction application also sought a declaration that the court had no jurisdiction to make a winding up order against the First Applicant, when the court ultimately found that it did have jurisdiction.

38. It is plain from the application notice itself, however, that the heads of relief sought in respect of the First Applicant were couched in the alternative, seeking firstly a declaration that the court had no jurisdiction to make a winding up order against the First Applicant and, in the alternative, an order that the Respondent be restrained from presenting a winding up petition against the First Applicant.

39. The court in any event is required by rule 7.24 IR 2016 to determine the issue of jurisdiction before considering the granting of an injunction to restrain presentation. The question of jurisdiction is a threshold consideration. It was therefore reasonable and appropriate for the Applicants to include reference to jurisdiction in their application notice. At the final hearing of the Injunction Application, they adopted a

neutral position on the issue of jurisdiction and simply invited the court to rule one way or the other.

40. Mr Hudson argued that in this regard he had been partially successful, as one of his objectives was to ensure that the court declared that it did have jurisdiction to wind up the First Applicant, to pave the way for other creditors. This argument was developed orally after exchange of skeleton arguments and appeared somewhat opportunistic. It also did not sit entirely comfortably with other arguments run by Mr Hudson, such as that run in relation to ADR. Even taking it at face value, however, in my judgment the fact (if such it be) that Mr Hudson considered the court's conclusion on jurisdiction to be of potential benefit in other cases does not render him a successful party in the context of the Injunction Application or warrant an issues-based costs order.

41. Mr Hudson also argued that the Applicants should not be treated as successful as, in relation to one of the five statutory demands served by Mr Hudson, the court concluded that the Applicants had not demonstrated on the evidence before the court substantial grounds for disputing the debt. Again, however, this was only one of two ways in which the Applicants challenged the statutory demand in question. The other was to rely on a cross-claim. The Applicants were successful in demonstrating a strongly arguable cross-claim in a sum equalling or exceeding the sums sought by the relevant statutory demands.

42. On behalf of the Applicants, Mr Lakshman relied on the guidance given in the William Roache case. He submitted that the objective of the Applicants bringing the application was to prevent presentation; that objective was achieved.

43. I accept this submission. The fact that, in relation to the First Applicant, one of two routes to that objective (jurisdiction) was not successful, does not mean that the Applicants were unsuccessful parties. I would add that only a very small percentage of the overall costs incurred in relation to the Injunction Application were generated by the jurisdiction issue in any event. Similarly, the fact that the Applicants succeeded on one of two grounds in relation to one of five statutory demands challenged does not warrant an issue-based order or render the Applicants anything other than the successful parties in relation to the Injunction Application. Again, I accept Mr Lakshman's submission that the 'disputed debt' ground and the 'cross-claim' ground were simply separate ways of seeking the successful parties' only objective in bringing the injunction application, which was to prevent presentation of a winding up petition.

44. The Applicants were also plainly the successful parties in Mr Hudson's Strike Out Application. This application was not only dismissed, but dismissed marked 'totally without merit'.

45. The Applicants were also the successful parties in the Extension Application and the Second Relief from Sanctions Application, which were both dismissed.

46. Similarly, the Applicants were the successful parties in the Adjournment Application. This was dismissed by ICC Judge Mullen at the hearing on 27 November 2023, with the costs of the same ordered to be costs in the Injunction Application. As made clear by paragraph 4.2 of CPR PD 44, the effect of an order of 'costs in the application' is that 'the party in whose favour the court makes an order for costs at the end of the

proceedings is entitled to that party's costs of the part of the proceedings to which the order relates'. There is no appeal from this aspect of ICC Judge Mullen's order.

47. No order was made on the First Relief from Sanctions Application, save that the costs of the same be costs in the Injunction Application. The Applicants had adopted a neutral position on the application. Mr Hudson argued that 'it effectively succeeded', on the ground that ultimately ICC Judge Mullen did, when making his order on 27 November 2023, vary the timetabling for evidence in the Injunction Application laid down in the court's orders of 13 and 23 October 2023, allowing both parties additional time. Even if this could be treated as a 'success' of sorts, however, ICC Judge Mullen plainly did not consider that it warranted a costs order in Mr Hudson's favour, or even 'no order as to costs', as he ordered the costs of the First Relief from Sanction Application to be costs in the Injunction Application: see paragraph 4.2 of CPR PD 44, quoted at [46] above. Again, there has been no appeal from this aspect of ICC Judge Mullen's order.

48. I would add that, in any event, mere success in a relief from sanction application does not lead inexorably to a conclusion that costs should be awarded in favour of the party successfully applying for that relief. The party applying for such relief is usually seeking the court's indulgence for having breached a court order. Even when the court grants such relief, it may consider that the general rule in CPR 44.2(2)(a) should be disapplied and a 'different order' made, such as that the applicant bears the costs of the application, or that the costs of the same should be costs in the main proceedings. Each case turns on consideration of all relevant circumstances.

CPR 44.2 (4) and (5)

49. As the last example demonstrates, the issue of who is the successful party is not the end of the matter. CPR 44.2(2) makes clear that if the court decides to make an order about costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court can make a 'different' order, having regard to all the circumstances of the case, including the factors set out in CPR 44.2 (4) and (5).

50. Mr Hudson raised a number of different points in this regard, which I shall now address.

51. Mr Hudson argued that these proceedings need not have arisen at all, but for the conduct of the Applicants. He complained that the Applicants had 'waited two weeks' before first writing (by letter dated 26 September 2023) in response to the Statutory Demands and had thereafter 'treated recourse to the Courts as their first and only choice'.

52. In my judgment the Applicants cannot be criticised for the timing of their response to the Statutory Demands. The five Statutory Demands were not preceded by a run of correspondence of the sort usually seen prior to service of a statutory demand and were all served at the same time; given their largely unheralded arrival and their varied subject matters, it was inevitable that it would take some time for the Applicants' solicitors to review the same and formulate a response. The legislature has thought fit to allow three weeks for response and the Applicants responded very comfortably within that time frame. If Mr Hudson felt under time pressure thereafter,

that time pressure was ultimately of his own making, having embarked on the inherently time critical process of serving statutory demands.

53. Moreover, it is wrong to suggest that the Applicants treated recourse to the courts as their first and only choice. The correspondence in evidence speaks for itself in this regard. Mishcon's letter of 26 September 2023 very properly invited Mr Hudson to withdraw the demands and to undertake not to present winding up petitions, warning him that unless he did so, injunctive relief and indemnity costs would be sought. Whilst the initial deadline set was tight, Mr Hudson was then given further time in which to take advice and consider his position. The Injunction Application was only issued after Mr Hudson had confirmed, by his email of 6 October 2023, that he was giving three business days' notice of his intent to present. The Applicants had little option but to issue the Injunction Application at that point.

54. Mr Hudson also contended that the Applicants had failed to spell out in their letter of 26 September 2023 that they would be relying on an arguable cross-claim in addition to contending that the debts claimed by the Statutory Demands were disputed on substantial grounds. Whilst the letter of 26 September 2023 did not expressly refer to an intention to rely on a cross-claim, however, reference was made to the Kings Bench Proceedings, which Mr Hudson already knew involved claims of £11.5 million. It was not for the Applicants' solicitors to advise Mr Hudson on the law. In any event, the first witness statement of Mr Steinruecken dated 11 October 2023, made in support of the Injunction Application, set out all points relied upon by the Applicants, including the cross-claim. The first order made by the court on the Injunction Application also included (as a recital) express reference to the cross-claim. From receipt of the first witness statement of Mr Steinruecken dated 11 October 2023 at the latest, Mr Hudson can have been in no doubt that the Applicants were pursuing a cross-claim argument in addition to a 'disputed debt' argument in relation to the Statutory Demands. Notwithstanding that fact, Mr Hudson did not withdraw any of the demands until the eve of the final hearing, when he withdrew two but still went on to argue the other three. As Mr Lakshman rightly observed, Mr Hudson cannot make out a persuasive case for costs purposes that he should have been told about the cross-claim earlier; for even when he was told, he did not withdraw the demands or offer a permanent undertaking not to present.

55. Mr Hudson also argued that the Applicants had unreasonably failed to mediate. On 8 November 2023, after issue of the Injunction Application, Mr Hudson had written to the Applicants offering mediation. The letter of 8 November 2023 contained a list of actions that Mr Hudson said he would take if his offer of mediation was not accepted. These included (1) a disclosure application, (2) a s.994 petition 'due to the profound criminal malfeasance' said to have been committed by Mr Steinruecken, Mishcon de Reya and others (3) a further complaint to Companies House regarding filings suggesting that he had resigned or been dismissed (4) a report to the Insolvency Service and (5) an application for security for costs. During the course of submissions Mr Hudson sought to downplay the significance of these threatened steps, describing them as 'preamble'. Reading the letter as a whole, these steps cannot be treated simply as preamble; they were a clear indication of Mr Hudson 's mindset at the time.

56. It is correct to state that the letter of 8 November 2023 went on to offer mediation. The letter continued as follows:

> 'Your application notice dated 11 October 2023 is ill founded, but I do not see any advantage to either of us or the creditors pursuing this matter to a hearing in court. I am confident and will act as a litigant in person and seek such advice as I can as the case continues; but, be assured that I will proceed with the above steps applications [sic].
>
> However, it is in both of our best interests (particularly as your Clients are insolvent and spending money misappropriated from stakeholders to pay for your legal services and/or incurring debts detrimental to existing creditors) to seek to resolve this matter and the optimum method is Mediation under the centre for Effective Disputes Resolution (CEDR). This is a firm and open offer of mediation. You will be aware of the decision in Re Halsey and if you reject mediation, even if you were wrongly to win, there will be a strong argument against you that it should not be accompanied by an order for any costs in your favour.
>
> I do hope that common sense will prevail notwithstanding the hostility that has been manifested in this action and that you will advise your Clients to stay their applications in these proceedings and agree to mediation. I am told that CEDR moves quickly (particularly compared to the current hearing listed in December) once a mediation application has been made and will provide a list of 3 persons from which we can choose the mediator who seems to be the most appropriate'.

57. Mishcon de Reya responded substantively by a 'without prejudice save as to costs' letter dated 24 November 2023. This provided inter alia as follows:

> 'The contents of your WP Letter
>
> 2. On page 1 of the WP Letter, you threatened that, if Invenia does not stay its injunction application and agree to mediate, you will: (1) issue a wide ranging disclosure application; (2) issue an unfair prejudice petition (based on alleged 'profound criminal misfeasance'); (3) file a complaint with Companies House regarding various alleged 'filing issues'; (4) report Invenia to the Insolvency Service; and (5) apply for security for costs.
>
> 3. Any of these actions, if taken, would be totally baseless. Thus, if you proceed to make any of these vexatious applications or complaints, Invenia will have no choice but to defend themselves, including (without limitation) by instituting an appropriate abuse of process or injunction application. Invenia will also seek the costs of any such applications on an indemnity basis.

4. Further, your accusation that the Invenia directors and our firm have committed 'criminal misfeasance' is wholly unsubstantiated and unjustified. We have now asked you many times to desist from making such wild allegations, but you consistently refuse. Such contumelious conduct must stop….

Invenia's Offer

7. You have made five baseless and invalid statutory demands against Invenia. As you know, your refusal to withdraw these demands forced Invenia to apply for injunction against you to restrain you from presenting a winding up petition in each case. Since then, you have issued four applications in the Proceedings. All of them are baseless, and none of them affect the merits of Invenia's application. Accordingly, Invenia's position remains that it is entitled to the injunctive relief that it seeks.

8. However, in the interests of cooperating and bringing the current dispute to a timely end, we confirm that Invenia is in principle to engaging in an appropriate form of alternative dispute resolution ("ADR"). That said, as a precursor to any negotiation or mediation, Invenia requires you to agree to the following terms - you will:

a. immediately withdraw each of the five statutory demands that you have filed, and you will undertake not to present a winding up petition against either ITC or Labs based on any of the allegations contained in those demands;

b. immediately undertake to cease holding yourself out as a Labs director;

c. immediately cease to engage with any Insolvency Practitioners in respect of either ITC or Lab's affairs;

d. undertake not to issue any further applications in the Proceedings; and

e. agree to pay Invenia's reasonable legal and associated costs of: (1) the injunction application dated 11 October 2023; (2) your cross examination application dated 12 October 2023; (3) your relief from sanctions application dated 24 October 2023; (4) your disclosure application dated 15 November 2023; and (5) your adjournment application dated 17 November 2023 (together, "Applications").

9. If you agree to these terms, then we confirm that Invenia would be willing to engage in an appropriate form of ADR, essentially for the purposes of agreeing an appropriate quantum of Invenia's costs.

> 10. Conversely, if you refuse to agree to these terms and the Applications proceeds, you are on notice that Invenia seek their costs of each Application, where appropriate on the indemnity basis.
>
> Next steps
>
> 11. If you are genuinely willing to attempt to settle these Proceedings, then you will agree to the terms outlined above. If you do so, please also let us know whether you would prefer to proceed to a negotiation or a mediation.
>
> 12. We look forward to hearing from you.'

58. By a further 'without prejudice save as to costs' letter dated 6 December 2023, Mishcons offered to accept £8643 in full and final settlement of the Applicants' costs of the First Relief from Sanctions Application and the Adjournment Application. This represented 60% of the total costs incurred by the Applicants on those applications and was stated to be offered in an effort to narrow the issues between the parties and save court time.

59. By letter dated 12 December 2023, Mr Hudson rejected Mishcon's proposed pre-conditions for ADR set out in their letter dated 24 November 2023, claiming that his offer of mediation had been 'ignored and/or refused with no valid reply having been received.' His letter also stated that the Injunction Application would fail and (inter alia) made further serious unsubstantiated allegations against the Applicants and their advisers.

60. Paragraph 6 of Mr Hudson's letter of 12 December 2023 went on to reject the Applicants' settlement offer in respect of the costs of the Adjournment Application and the First Relief from Sanction Application set out in Mishcon's letter of 6 December 2023. The letter stated that if the Applicants would like to resolve any outstanding costs issues, they should make a proposal 'for a singular amount which each party will agree to pay to the other party to settle the entirety of the costs in the case, if they prevail at the hearing.' This was plainly unworkable, given that the Applicants were legally represented and Mr Hudson was acting as a litigant in person.

61. In oral submissions Mr Hudson argued that Mishcon's counteroffer on ADR was not a bona fide response, as the conditions at paragraph 8 of the letter 'made ADR impossible'. I pause here to note that if Mr Hudson had considered any of the proposed pre-conditions to be unduly restrictive, it was always open to him to propose varied wording.

62. Overall, on the evidence before me, Mr Hudson has failed to persuade me that the Applicants unreasonably refused to participate in mediation.

63. In my judgment it is clear from the correspondence and the evidence as a whole that at all material times the Applicants reasonably believed that they had a strong case: see Halsey at [18]. This was a clear-cut case for injunctive relief, on an application with a threshold test akin to that applied in applications for summary judgment: see

Halsey at [19]. The Strike Out Application was plainly hopeless and was ultimately dismissed marked totally without merit.

64. Other settlement methods had already been attempted; the Applicants had already given Mr Hudson the opportunity to withdraw the Statutory Demands and to offer a permanent undertaking not to present, by their letter dated 26 September 2023 and subsequent related correspondence: see [22]-[24] above. That opportunity had been rejected, suggesting (as did the subsequent correspondence regarding ADR) that Mr Hudson had unrealistic views of the merits of his case: see Halsey at [20].

65. The mediation offer was put forward in November 2023, at a time when the parties already had a final half-day hearing listed in December 2023: Halsey at [22]. The suggestion that ADR could have saved time and costs in the context of this case is in my judgment fanciful. In my judgment the proposed mediation had no real prospects of success. It was clear from the correspondence and Mr Hudson's witness statements that Mr Hudson had entirely unrealistic views about the merits of his case. He also compounded matters by making repeated serious unsubstantiated allegations of wrong-doing against the Applicants and their lawyers, despite being asked on numerous occasions to desist. In reality, mediation would simply have added another layer of expense for no good purpose. It would also have put in jeopardy the December listing, thus delaying final disposal of the proceedings: see Halsey at [16] and [22].

66. Mr Hudson argued that the Applicants had agreed to ADR with another creditor who had served a statutory demand. The terms agreed with that creditor (agreed, I note, on undertakings, prior to issue of any injunctive proceedings) were however different and the dispute between the parties was far narrower. In the present case, a number of the sums claimed in the Statutory Demands had connections with issues raised in the ongoing complex litigation between the Applicants and Mr Hudson in the King's Bench Division; litigation which, I note, involved contested allegations of breach of fiduciary duty, commercially disreputable conduct and misappropriation of property: see Halsey at [17].

67. For all these reasons, Mr Hudson has failed to persuade me that the Applicants unreasonably refused to agree to ADR.

68. Mr Hudson also argued that the Applicants should be denied their costs of various of the applications which he issued after his letter of 8 November 2023 offering mediation, arguing that had the Applicants agreed to mediate, he would not have issued such applications. I have no hesitation in rejecting this argument. As I have concluded, the Applicants did not unreasonably refuse to mediate. Moreover, it was entirely Mr Hudson's decision to issue such further applications. He did so at his own risk as to costs.

69. Mr Hudson also made various other allegations regarding the Applicants' conduct which he maintained warranted an order denying them their costs. In the interests of brevity, I shall not list them all. Suffice it to state that the other matters of conduct relied upon in this context were either disputed and not made out on the evidence, or, if undisputed or made out on the evidence, did not merit the costs orders sought.

Discussion and conclusions

70. In my judgment, Mr Hudson should be ordered to pay the Applicants' costs of all the Applications.

71. In relation to the Injunction Application, the Strike-Out Application, the Extension Application and the Second Relief from Sanctions Application, Mr Hudson is plainly the unsuccessful party. Having considered all the circumstances of this case, including the factors set out at CPR 44.2(4) and (5), I consider there to be no good reason to depart from the general rule at CPR 44.2(2)(a) that the unsuccessful party will be ordered to pay the costs of the successful party.

72. In relation to the First Relief from Sanctions Application and the Adjournment Application, ICC Judge Mullen has already ordered that the costs of these application shall be costs in the Injunction Application: see paragraph 4.2 of CPR PD 44 and paragraphs [46]-[47] of this judgment.

73. As this court has ordered that Mr Hudson must pay the Applicants' costs of the Injunction Application, and ICC Judge Mullen ordered that the costs of the First Relief from Sanctions Application and the Adjournment Application were costs in the Injunction Application, it follows that the appropriate order in relation to the First Relief from Sanction Application and the Adjournment Application is that Mr Hudson do pay the Applicants' costs of those applications.

74. I turn next to the basis of assessment.

Basis of assessment

75. Mr Hudson contended that any costs orders was made against him should be on the standard basis.

76. I have considered all points raised by Mr Hudson in both his written and oral submissions on this issue. In the interests of brevity, I will not attempt to list them all, but shall simply set out the main points raised.

77. Mr Hudson argued that

(1) the Applicants were 'not solvent';

(2) whilst he had served the statutory demands, he had offered mediation;

(3) he did not initially instigate proceedings, he was the respondent to the Injunction Application;

(4) as the TPS demand was not shown to be disputed on substantial grounds, he had standing to present a winding up petition and it was not an abuse of process to threaten to present a winding up petition in such circumstances; the existence of the cross-claim simply gave the court a discretion as to whether or not to permit presentation;

(5) his conduct had been 'in good faith with a view to furthering the overriding objective and complying with his obligations under CPR 1.3';

(6) there was a distinction between what a reasonable litigant in person may believe is appropriate and what a reasonable experienced solicitor or barrister would do;

(7) he was put in the position of 'learning on-the-fly';

(8) he had learned from earlier errors as quickly as he could.

Discussion and Conclusions on basis

78. In my judgment, Mr Hudson's actions in pursuing the First Relief from Sanctions Application, the Adjournment Application, the Extension Application and the Second Relief from Sanctions Application were not of themselves such as to warrant an order for indemnity costs in respect of those applications. His conduct in relation to those applications and the circumstances surrounding the same were not such as to take the same 'out of the norm'.

79. It follows that costs in relation to the First Relief from Sanctions Application, the Adjournment Application, the Extension Application and the Second Relief from Sanctions Application will be awarded on the standard basis.

80. Save for the foregoing costs, in my judgment Mr Hudson should pay the Applicants' costs of and occasioned by the Injunction Application and the Strike Out Application on the indemnity basis.

81. It was in my judgment an abuse of court process for Mr Hudson to threaten to present winding up petitions based on the debts claimed by the Statutory Demands. The fact that one of the five demands, the TPS demand, was not shown on the evidence before the court to be disputed on substantial grounds and was met simply by the cross-claim does not detract from that conclusion: see Coilcolour at [33]. I would add that even if the Applicants had been, as Mr Hudson contended, insolvent (and I should stress that no persuasive evidence was adduced to support this contention), it would still have been wholly inappropriate for Mr Hudson to present winding up petitions based on the debts claimed in the Statutory Demands: see Coilcolour at [33]. The subject matter of the Statutory Demands, considered against the backdrop of the Kings Bench Proceedings, rendered them plainly unsuitable for disposal by way of winding up proceedings.

82. The matters addressed at paragraph [81] of this judgment would of themselves warrant an order for indemnity costs on the Injunction Application: see Re a Company (no 0012209 of 1991) [1992] 1 WLR 351 at 354 per Hoffmann J. In the present case, however, there are other aspects of Mr Hudson's conduct in responding to the Injunction Application which also take the case 'out of the norm' and which I also take into account in concluding that indemnity costs are appropriate.

83. First, the number of unsuccessful and/or unwarranted applications issued in response to the Injunction Application. These included applications for disclosure, cross examination, and strike out. As ICC Judge Mullen observed: 'we have had applications flying out of the woodwork in no particular order' and 'there has been a loss of a proper sense of proportion as a whole'. Six of Mr Hudson's applications were dismissed and two of these were marked as being totally without merit.

84. Second Mr Hudson's attempts to conduct the litigation through extensive correspondence with the court, on a number of occasions without copying in the Applicants' solicitors. This wasted a large volume of court time, which could have been put to better use on other cases. As noted by Deputy Master Linwood in Liu v Matyas [2020] EWHC 2923 (Ch) at [36], if a litigant in person engages in an 'enormous volume of correspondence on what should [be] a relatively straight forward matter', that alone may warrant an indemnity costs order. Whilst I accept that, latterly, Mr Hudson 'reined in' his correspondence, his earlier conduct in this regard remains a factor to take into account.

85. Third, the volume of evidence submitted by Mr Hudson shortly before court hearings. Mr Hudson demonstrated a pattern of conduct in this regard. In total Mr Hudson filed and served 12 witness statements in the proceedings; 8 of them (ie 75%) less than one working day before a hearing. It was not only unnecessary for Mr Hudson to produce such a large volume of evidence (as put by ICC Judge Mullen, 'far too many words and pages have been generated in this matter'), it was also disruptive for the court and the other parties when preparing for hearings, generating further work at the last-minute and exacerbating costs. This did not assist the court (or the parties) in furthering the overriding objective.

86. Fourth, throughout the proceedings, Mr Hudson repeatedly made unsubstantiated allegations of a very serious nature, including fraud. By way of example, in his evidence in response to the Injunction Application,

(1) Mr Hudson accused the Applicants of producing forged documents, swearing false testimony and manufacturing evidence;

(2) Mr Hudson accused the Applicants' solicitors, Mishcon de Reya, of having received shareholders' proprietary trust funds as an illicit payment for their services;

(3) Mr Hudson accused Mr Steinruecken of unlawfully falsifying a power of attorney and of actively committing a criminal offence.

As observed by ICC Judge Mullen in his judgment following the hearing on 27 November 2023, 'far too much time has necessarily had to be incurred in responding to very serious allegations of forgery and fraud.'

87. Mr Hudson's conduct is not excused by the fact that he is a litigant in person. As observed by Lord Sumption in Barton v Wright Hassall LLP [2018] UKSC 12 at [18], a lack of legal representation 'will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court'. As also observed by Deputy Master Linwood in Liu v Matyas at [31]:

> 'being a litigant in person does not excuse poor conduct, particularly it does not excuse making and maintaining baseless allegations of fraud'

88. The fact that Mr Hudson found himself, as he put it, having to learn 'on the fly', was a situation of his own making, having chosen to embark on the inherently time-critical process of serving statutory demands. Moreover, Mr Hudson is an extremely intelligent, articulate individual. During the course of the hearings before me in this

matter, he demonstrated a very close acquaintance with the requirements of the CPR and made relevant reference to case law. It was also of note that, in his letter of 8 November 2023 offering mediation, he made express reference to Halsey.

89. In my judgment the fact that Mr Hudson did not initially instigate proceedings but was instead a respondent to the Injunction Application makes no difference to the appropriate costs outcome on that application. He was warned of the consequences of his refusal to withdraw the Statutory Demands at the outset and given a fair opportunity to avoid the costs of the Injunction proceedings altogether: see [22] – [24] above.

90. For reasons already explored in this judgment, the fact that Mr Hudson offered to mediate does not assist him either.

91. Taking all such matters into account, in my judgment this is a very clear case for ordering Mr Hudson to pay the Applicants' costs of the Injunction Application on the indemnity basis, save for the interlocutory applications listed at [79] above.

92. I am further satisfied that Mr Hudson should be ordered to pay the Applicants' costs of the Strike Out Application on the indemnity basis (again, subject to [79] above). The Strike Out Application was dismissed marked 'totally without merit'. In my judgment, Mr Hudson's conduct in pursuing the Strike Out Application went 'outside the norm'. The application was based on very serious allegations of fraud, forgery and collusion involving the Applicants, their solicitors and counsel. By way of example, in his 12th witness statement dated 12 December 2023, Mr Hudson alleged that:

(1) 'The Appellants [sic] and their solicitors clearly suppressed significant amounts of material evidence in order to gain an unfair tactical advantage in these Proceedings either deliberately or recklessly';

(2) Mr Persad, Mr Matthews and Ms Fitton (respectively a partner, managing associate and trainee at Mishcons) 'aided the fraudulent suppression of 415 pages of evidence … and aided the cover up of malfeasance';

(3) there was 'a deliberate attempt on the part of Mr Persad and [Counsel] to mislead the court, and trade on the presumption of good faith of officers of the Court which ought to be sacrosanct';

(4) Mr Persad 'colluded with [Counsel] to seriously and materially mislead the Court in order to avoid scrutiny of the tampering and suppression of evidence'.

93. These allegations (vehemently denied, I should say, by the Applicants) were entirely unsubstantiated. No grounds for striking out the Injunction Application were made out on the evidence. The Strike Out Application was hopeless.

94. As rightly observed by Mr Lakshman, Mr Hudson's conduct in pursuing the Strike Out Application also contained many of the other features which marked his conduct in the context of the Injunction Application. These included conducting litigation through extensive correspondence with the court (such as Mr Hudson 's long letter to the court of 24 November 2023) and submitting large volumes of evidence shortly before hearings; Hudson 6 and Hudson 12 were both lengthy and were submitted less

than one working day before the 27 November hearing and the 13 December hearing respectively. These are factors which I also take into account in deciding the basis upon which costs should be awarded.

95. For all these reasons, in my judgment, Mr Hudson's conduct in issuing the Strike Out Application and the manner in which he pursued the same was outside the ordinary and reasonable conduct of proceedings and warrant an order for indemnity costs.

Interim Costs

96. It remains for me to address the issue of interim costs. CPR 44.2(8) provides that:

> 'Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.'

97. The main object of the rule is to enable a receiving party to recover part of his expenditure on costs before the possibly protracted process of carrying out a detailed assessment.

98. Mr Hudson resisted interim costs on the grounds of impecuniosity. Inability to pay does not, however, constitute good reason for not making an interim payment order under CPR 44.2(8): Bank St Petersburg PJSC v Arkhangelsky [2018] EWHC 2817 (Ch).

99. Having considered the costs schedules and having heard submissions on quantum, I shall order that Mr Hudson pay £37,807 on account of the costs of the Applications by 4pm on 13 March 2024.

ICC Judge Barber