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Claim No:CR-2021-LDS-000639

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

West Gate
6 Grace Street
Leeds
LS1 2RP

Monday, 24 June 2024

BEFORE:

MR JUSTICE ADAM JOHNSON

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IN THE MATTER OF HAGUE PLANT LIMITED (Company Number 01222728)
AND IN THE MATTER OF THE COMPANIES ACT 2006

BETWEEN:

(1) MR MARTIN HAGUE
(2) MRS JEAN HAGUE

Petitioners

-and-

(1) MR DAVID HAGUE
(2) MS DIANNE HAGUE
(3) HAGUE PLANT LIMITED

Respondents

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GREGORY PIPE and MARGARET GRIFFIN (Instructed by Robert Tranter, in-house solicitor for Martin Hague) appeared on behalf of the Petitioner.

HUGH JORY KC and ALFRED WEISS (Instructed by Freeths LLP, Fifth Floor, 3 St Paul's Place, 129 Norfolk Street, Sheffield, S1 2JE) appeared on behalf of the First Respondent.
The Second Respondent, **DIANNE HAGUE**, appeared in person

JUDGMENT

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1. MR JUSTICE ADAM JOHNSON: I need to deal with an issue concerning expert evidence which has arisen during the course of this trial. The issue in short is whether a particular matter which requires expert evidence should be deferred until the second stage of these proceedings. The action is an unfair prejudice Petition. The proceedings have been bifurcated so that I am presently dealing with issues of liability. The quantum or valuation phase will take place separately.

2. One issue in the action concerns the levels of remuneration paid to the two individual Respondents and to certain of their family members. The Petitioners challenge the remuneration levels as excessive.

3. The disclosure exercise in connection with the remuneration issue was a troubled one. There were defaults by the Respondents and disclosure was given late. That delayed the instruction of experts. In the end, although originally debarred from advancing any case, the Respondents obtained relief from sanction, but this was on the basis that they instruct as a single joint expert, a Mr Baxter, who had originally been proposed by the Petitioners as their expert. It then took a little time for Mr Baxter to be instructed and the lack of disclosure limited the scope of the instructions which could be given to him.

4. The upshot of all that was that Mr Baxter did not produce a report until 16 May 2024. That was very shortly before the start of the trial, which was on 3 June and, of course, during that period there was a lot going on in terms of pre-trial preparation.

5. When the Petitioners saw the report of Mr Baxter they had some concerns about it. Their principal concern was that Mr Baxter had used median salary data taken from a third party source, TBP2 Limited, but without explaining his instructions to them in detail and without it being clear what sample data TBP2 Limited itself had relied on.

6. When the matter was raised at the start of trial, I encouraged the Petitioners to put questions to Mr Baxter to see whether that would solve the problem. Some questions have been put to him but there remained some concerns. Principal among them is the

fact that the makeup of the data set used by TBP2 Limited remains somewhat obscure. Only limited information is presently available. TBP2 Limited in a document provided to Mr Baxter have explained that when benchmarking any job, their approach is to "*compare the job to other jobs of similar complexity*." But the meaning of this phrase is somewhat unclear. Further, TBP2 have said that for all of their surveys the raw data remains confidential. I accept there is a question about what information might or might not be available on an anonymised basis, but the fact remains that for now no completely clear information is provided which would enable an informed assessment to be made of whether the survey data relied on in fact reflects true comparables or not.

7. In light of such matters, the Petitioners say they are likely to wish to instruct their own expert. They say they cannot do so now and so the question of excessive remuneration should be deferred and dealt with in the later phase of the proceedings dealing with valuation issues, assuming the case progresses that far.

8. So that is the position today. We are in the middle of the present trial. The Petitioners' factual evidence has concluded; we are just about to start the Respondents' factual evidence, and we have to come to a view now because if the matter of excessive remuneration remains in issue in this trial, then the Respondents' factual witnesses will need to be cross-examined about issues that go to it.

9. The question for me is how best to respond. That, it seems to me, is a matter of case management. In Daniels v. Walker (Practice Note) 2000 WLR 1382, Lord Woolf MR gave some detailed guidance about how to proceed in cases where a single joint expert has been appointed and then one of the parties wishes to instruct its own expert. Although hopeful that in most cases the report of a single joint expert would give the Court all that was required to make a determination, Lord Woolf recognised that, in some cases at least, that would not be so and that directions might have to be given for the filing of further evidence from another expert. At page 1387 between D to E he said that if, having obtained a single joint expert's report, a party "*for reasons which are not fanciful*" wishes to obtain further information before making the decision as to whether to challenge some or all of the report of the single joint expert, he should be permitted to obtain that evidence. In my opinion that is the correct

question to ask here. Have the Petitioners identified reasons which are not fanciful for wanting to cross-check the report of Mr Baxter? I think they have, for the reasons I have already given. It seems to me that this is not a high hurdle and that the Petitioners have cleared it comfortably because of the points they have made about the instructions given by Mr Baxter and the data source used by him. The concerns remain, despite the questions raised with Mr Baxter, although no doubt further questions can be asked of him.

10. The Petitioners have already been in contact with some potential experts. The next logical step would be for them to instruct someone more formally, to see what such expert might say effectively by way of a second opinion. I think the Petitioners should be entitled to do that before deciding finally whether to accept what Mr Baxter says, or pressing ahead and applying to rely on the report of their own separately appointed expert. The practical point is that that cannot now happen during the course of this ongoing trial. The Petitioners are about to embark on the business of cross-examining the Respondents' witnesses. That is an important part of the case for the Petitioners, and their legal team should not be required to divert their limited resources in the direction of instructing a further expert at short notice. Neither would there be time for the two experts to meet, which Lord Woolf in Daniels v. Walker thought would be a necessary step before any decision by the Court whether to admit the report of a further expert into evidence (see at page 1388A). So I think it is all too impractical and that this part of the case must therefore be deferred.

11. To be clear about it, I am not now giving any direction that the Court *will* admit into evidence at phase 2 a report from a further expert appointed by the Petitioners. Determination of that question will itself now have to wait until an expert has been appointed and the experts have had a chance to meet, and perhaps further questions have been put to Mr Baxter. All I am saying for now is that, the Petitioners having identified legitimate concerns which are beyond the merely fanciful, and which may mean that further evidence is legitimately needed in order for the issue of excessive remuneration to be fairly and properly addressed, it should be removed from the scope of this trial and dealt with separately.

12. I accept that this is an unsatisfactory outcome, but it seems to me that in case management terms it is the least worst of the possible outcomes, because the alternative is to proceed now and possibly create an injustice by preventing the Petitioners from relying on evidence that they may legitimately be entitled to rely on.

13. This conclusion is reinforced the fact that the issue has crystallised only at the present stage because of the Respondents' own defaults in connection with disclosure. Ideally, one would have wanted all questions about expert evidence to be addressed much earlier in the litigation process. Unfortunately, that did not happen, and in consequence the available options at this stage are limited. In choosing between them, it seems to me that I should give the benefit of the doubt to the Petitioners because they were not responsible for the earlier procedural defaults and should not be disadvantaged by their ongoing impact or effect. They would be, if I were to close down now any chance of them being able to rely on the evidence of their own expert. On the other hand, I see no real disadvantage to the Respondents in deferring the remuneration question to phase 2 of the trial, and indeed there may be some immediate advantage to them in doing so, since it removes from phase 1 a self-standing ground of unfair prejudice which they will no longer have to defend.

14. The most that can be said is that the Respondents will lose the opportunity of delivering a knockout blow to the excessive remuneration argument based on the evidence of Mr Baxter alone. On this point Mr Jory KC encouraged me to be bold and said that the assessment for the Court can only ever be a broad brush one in connection with such matters: see, for example, the comments of Ferris J. in Lloyd v. Casey [2002] 1 BCLC 439 at paragraph [61]. The answer to that, it seems to me, is the one I have already given. If it is procedurally unjust to continue at this trial on the basis of Mr Baxter's report alone, then it is unjust; and if that is right then to say that the Court should not proceed to determine the excessive remuneration issue at this stage does not, in fact, deprive the Respondents of any legitimate advantage they would otherwise have.

15. For all those reasons, in my opinion the Petitioners' application should be allowed. I may need to hear further from counsel as to the precise scope of any directions to be

given in consequence but I very much hope that will not be the subject of ongoing disagreement.