

Neutral Citation Number: [2022] EWHC 1861 (Comm)

Case No: CL-2022-000077

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS OF ENGLAND & WALES**  
**COMMERCIAL COURT (QBD)**

Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Wednesday, 13<sup>th</sup> June 2022

**Before:**

**HIS HONOUR JUDGE PELLING, QC**  
**(sitting as a High Court Judge)**

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**Between:**

**FVS INVESTMENTS LIMITED**

**Claimants**

**- and -**

**(1) G3 GOOD GOVERNANCE GROUP**  
**(2) MICHAEL DAVID BEVAN**  
**(3) NICHOLAS HARDING**

**Defendants**

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**The Claimants were neither present nor represented.**  
**MR. ALEXANDER RIDDIFORD** (instructed by **Simmons & Simmons LLP**) for the  
**Defendants**

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**APPROVED JUDGMENT**  
**(Re Civil Restraint Order and Costs)**  
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**[Transcript prepared from poor quality audio]**

**JUDGE PELLING :**

1. There are three issues which I now have to resolve. The first concerns the question whether or not I should certify the claim as totally without merit and if I do whether I should make a civil restraint order. In my judgment, that would be an inappropriate course to adopt in the circumstances of this case because the claim is being struck out on the technical basis that I identified in the judgment I gave a moment ago. As the respondent's counsel correctly submits, the application before me says nothing whatsoever about the legal or factual merits of the claim, and therefore it is inappropriate that I should certify the underlying claims as totally without merit. Therefore, there is no question of a civil restraint order arising out of these proceedings.
2. The next issue which arises concerns costs. I am asked to order that the applicant should recover their costs of and occasioned by the application. That is plainly an appropriate order to make since they have been successful, which is the primary test imposed by CPR Part 48 and there are no underlying circumstances concerning conduct on the part of the applicant that would justify any alternative order.
3. Finally, I have to decide whether or not the costs the applicants are entitled to recover should be assessed on the standard or indemnity basis. So far as that is concerned the test to be applied is the *Excelsior* test which as is well known requires a court to assess whether or not the conduct of the paying party falls outside the norm in relevant ways. In my judgment, the circumstances which lead to the strike out application and to the order that I made today plainly demonstrate that there is a failure on the part of the claimant to conduct itself within the norms to be expected of the conduct of litigation in the Commercial Court. In those circumstances, it is appropriate there should be an order for costs to be assessed on an indemnity basis.

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**This Judgment has been approved by HHJ Pelling QC.**