Neutral Citation Number: [2024] EWHC 2302 (Comm)

Case No: CL-2023- 000152

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 09/09/2024

Before :

Mr. Nigel Cooper KC sitting as a High Court Judge

- -

Between :

CANCRIE INVESTMENTS LIMITED	**Claimant**
- and -	
MR. ZULFIQUR AL TANVEER HAIDER	**Defendant**

- -
- -

George Hayman KC and Duncan McCombe (instructed by **Lewis Silkin LLP**) for the **Claimant**

Richard Slade & Partners LLP instructed for the **Defendant**

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JUDGMENT ON COSTS

This judgment was handed down remotely at 10.30am on 9th September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Nigel Cooper KC:

Introduction

1. This is my judgment on costs following the handing down of my judgment on 22 July 2024 ("the Judgment") dismissing the Strike Out Application and the Summary Judgment Application made by the Defendant and granting the Continuation Application made by the Claimant to continue the Worldwide Freezing Order made against the Defendant by HHJ Pelling KC on 18 July 2023.

2. Following the Judgment, the parties were able to agree the terms of the Order to give effect to the Judgment save in respect of costs. Sensibly, the parties agreed that the issue of costs could be dealt with on paper and agreed a timetable for the exchange of written submissions. This is my judgment on costs having considered those written submissions and the authorities bundle provided with them.

3. The Claimant seeks orders in the following terms:

    i) The Defendant shall pay the Claimant's costs of the Strike Out and Summary Judgment Applications to be assessed if not agreed.

    ii) The Defendant shall pay the Claimant's costs of the Continuation Application to be assessed if not agreed. The costs up to the first return date before Dias J. should be reserved.

    iii) The Defendant shall pay the Claimant the sum of £209,000 on account of the above costs liabilities.

4. The Defendant properly recognises:

    i) That in relation to the Claimant's costs of the Strike Out and Summary Judgment Applications, there is no reason to depart from the usual order that costs should follow the event. The Defendant accordingly accepts that he should pay the Claimant's costs of the Strike Out and Summary Judgment Applications to be assessed if not agreed.

    ii) That in principle, it is appropriate for there to be a payment on account in respect of any costs ordered to be paid to the Claimant.

5. The Defendant disputes:

    i) The Defendant's entitlement to the costs of the Continuation Application and submits that the appropriate order is that the costs of that application should be reserved.

    ii) The amount of the payment on account sought by the Claimant.

6. Accordingly, there are two matters which I have to decide.

    i) What is the appropriate costs order to make on the Continuation Application? and

    ii) What is the amount of any payment on account to be made to the Claimant?

Background

7. The factual and legal issues underlying the Strike Out Application, the Reverse Summary Judgment Application and the Continuation Application together with my reasons for dismissing the Defendant's applications and granting the Continuation Application are fully set out in the Judgment and I do not propose to repeat them here. The Judgment also contains a full account of the procedural history leading up to the hearing before me and the changes to the Defendant's case made shortly before the hearing both in relation to the Strike Out and Reverse Summary Judgment Applications and in relation to the Continuation Application.

8. For the purposes of the questions before me now, however, the following matters are particularly relevant:

   i) The basis of the Strike Out Application was changed shortly before the hearing with an impact on the expert evidence relevant to the hearing (see the Judgment at paragraphs 33 to 41);

   ii) The Application Notice for the Strike Out Application was widely drafted by reference to the Defence. The Defence in turn did not plead clearly the Defendant's case as to breach of natural justice (the Judgment at paragraphs 38 to 40).

   iii) The Defendant had served extensive evidence in the second report from his expert, Mr. Abuwasel, on which he sought to rely for the purposes of the Continuation Application but for which he did not have permission (the Judgment at paragraphs 42 to 44).

   iv) The Summary Judgment Application was issued late and only shortly before the hearing (the Judgment at paragraphs 47 to 48).

   v) The issues before me on the Continuation Application were (i) whether the Claimant had a good arguable case and (ii) whether there had been a failure by the Claimant to make full and frank disclosure on the original without notice application for the Worldwide Freezing Order. However, until about a week before the hearing, the Defendant also maintained that there was no real risk of dissipation which justified the continuation of the Worldwide Freezing Order. However, on 01 May 2024, the Defendant wrote to the Claimant conceding that there was a real risk of dissipation of his assets. By this time, the evidence addressing whether there was a real risk of dissipation had been completed.

What is the appropriate costs order to make on the Continuation Application?

9. It is common ground between the parties that the general principle in relation to applications for an interim injunctions is that the court will ordinarily reserve the costs of the application until final determination of the substantive issue. The Court of Appeal in Melford Capital Partners LLP v. Wingfield Digby [2021] 1 WLR 1553 (CA) at [35] approved the following statement from the White Book (now at paragraph 15-53.2 of SCP 2024 vol 2):

"Where an interim injunction is granted the court will normally reserve the costs of the application until determination of the substantive issue (Desquenne). However, the court's hands are not tied and if special factors are present an order for costs may be made and those costs summarily assessed (Picnic at Ascot)."

10. Whether to take the so-called 'normal approach' is still a matter for the discretion of the court and, as the Court of Appeal made clear at [38], the normal approach applies where the grant of the injunction turns on the balance of convenience. As the Claimant correctly points out, the balance of convenience forms no part of the test for the grant of a freezing junction, as opposed to interim injunctions granted under the *American Cyanamid* principles. The question, therefore, is whether the same normal approach should apply in the context of worldwide freezing injunctions. As to this, there are conflicting authorities.

11. Inevitably, the Claimant contends that I should follow those authorities which suggest that the ordinary approach in relation to freezing injunctions is that the court should make an order for costs following the hearing of a continuation application. Whereas the Defendant contends that I should follow the authority which supports the approach that the court should ordinarily reserve costs.

12. The first case is Bravo v Amerisur Resources plc [2020] Costs LR 1329. In that case, Martin Spencer J made costs orders in favour of the successful applicant for a freezing injunction and stated at §52-54:

"*52. It seems to me that this is enough to show that the decision in Picnic at Ascot [establishing the normal rule for interim injunctions] is not wholly apposite [in] claims for freezing orders where the balance of convenience is not an issue, and where in relation to the merits of the case the court has regard to the question of whether there is a good arguable case on behalf of the claimants or not. That is sufficient for the court to determine whether a freezing order should be made, and even if at the subsequent trial it turns out that the claims fail on the basis of the evidence due to that trial, it does not at all follow that this means that the court was wrong to find that there was a good arguable case. On the contrary, those two findings are wholly consistent with each other, or maybe wholly consistent with each other. Nor is there any reference to the balance of convenience. The question is whether it is just and convenient to make an order.*

53. Therefore, I agree with Mr Lord that the regime for the making of freezing orders is different to the general position where interim injunctions are sought based upon balance of convenience and holding the ring pending the trial. There are, obviously, overlapping features, holding the ring being one of them. The purpose of a freezing injunction is to avoid a successful claimant being unable to enjoy the fruits of his success because there are no assets left against which the judgment can be enforced, but that is a different kind of holding of the ring to that which is involved in the usual interim injunction and balance of convenience type case.

54. In the circumstances, I do not consider that it is appropriate to make an order reserving the costs as I do not consider that a judge at trial is going to be in any better position than I am to adjudicate upon the costs of these applications, armed, as I am, with the information that I have…"

13. Bravo was followed in PJSC Pharmaceutical Firm "Darnitsa" v Metabay Import/Export Ltd [2021] EWHC 1471 (Comm). Although Sir Michael Burton GBE considered that the reasoning in Bravo applied only to the *inter partes* hearing before him, not the prior without notice application.

14. Bravo was not cited in Re Microcredit [2021] EWHC 1904 (Ch), but Penelope Reed KC (sitting as a Deputy High Court Judge) made costs awards in favour of the successful applicant for a freezing injunction on the basis that the issues decided on the application were "*discrete issues which are not going to be determined on the final disposal of this application*[1] *when it comes to trial.*"

15. In Kumar v Sharma [2022] Costs LR 1029, Jonathan Hilliard KC (sitting as Deputy High Court Judge) agreed with the Bravo case and ordered that the costs of the contested return date should be paid by the unsuccessful Respondent, with the costs of the without notice application being reserved. The Judge summarised at [11] – [12] his reasons for doing so:

> "*11. In my judgment, the costs of the return date should be assessed now, as they were in the cases that I have just mentioned. However, the costs of the without notice application should be reserved.*
>
> *12. Starting with the costs of the return date:*
>
> *(1) As explained in Bravo… a freezing order does not hold the ring in the same sense as other types of interim injunction often do.*
>
> *(2) It is a choice for a defendant as to whether to resist the continuance of a freezing order and cause the costs of the return date to be incurred.*
>
> *(3) There are clear tests for whether a freezing order should be granted and continued, and those are different to the tests for whether the claim should succeed at trial.*
>
> *(4) It follows that it is possible to tell, in most cases, who the winner and loser is on a return date in a way that it is often not on an interim injunction that truly holds the ring on an interim basis until trial.*
>
> *(5) Therefore, the fact that, here, the evidence relating to good arguable case will overlap or be the same as the evidence relevant at trial to whether the claim succeeds on the facts is not, to my mind, decisive. If the defendant chooses to oppose the continuation of the freezing order, it needs to prevent the claimant demonstrating that there is a good arguable case if that is the ground of challenge it chooses to mount on the return date, and if the defendant fails, then it has failed on the return date on that element of the case irrespective of what happens at trial, and that, to my mind, is consistent with the reasoning in Bravo.*
>
> *(6) By analogy, where, for example, a defendant brings an application for reverse summary judgment against the claimant and fails, it is no answer to the claimant's claim for costs that the defendant may ultimately be the successful party at trial on the balance of probabilities.*
>
> *(7) Indeed, were it otherwise, a defendant would have a free shot at opposing a freezing order continuance on a return date on the good arguable case ground,*

[1] These were insolvency proceedings in which matters are resolved via applications in the original insolvency proceedings, so by "*application*" here the Judge must have meant the substantive proceedings.

knowing that it would not have to bear costs if it ultimately succeeded at trial, or unless and until the trial took place and had been decided.

(8) Further, I am able to deal with the issues of full and frank disclosure and the duty of fair presentation now and, to my mind, I am in a considerably better position to do so than the trial judge.

…"

16. The above line of authority was not followed by HHJ Davis-White KC (sitting as a High Court Judge) in Al Assam v Tsouvelekakis [2022] EWHC 2137 (Ch) at [222] – [263]. In a careful and fully-reasoned judgment, the Judge considered the authorities discussed above and explained his reasons for preferring to follow the approach normally followed in relation to interim injunctions when considering the appropriate costs order having continued a freezing injunction. In particular, at [258] – [263], he went through each of Mr. Jonathan Hilliard KC's nine points and explained why he considered that they did not justify a different approach in the context of freezing injunctions to that normally adopted in the context of interim injunctions more generally. The Judge summarised his conclusion as to the proper approach to the case in front of him in the following terms (at [264]):

"In this case, it seems to me that the general approach to costs which applies in the American Cynamid context should be applied. In short, is it fair that the defendant should pay the cost of an injunction against him to assist in preserving assets and preventing improper dissipation so a possible judgment against him will be satisfied, if at the trial it turns out that there is in fact nothing for which he is liable and no judgment against him? My answer is "No"."

17. The Judge went on to conclude that even if he was wrong about the general approach to be applied, then in the circumstances of the case before him, he would still have reserved costs (at [266]).

18. HHJ Davis-White KC's reasoning was not accepted by Edwin Johnson J in Harrington & Charles Trading Ltd v Mehta [2023] EWHC 609 (Ch) at [13] –[53]. Edwin Johnson J found the reasoning in Bravo and Kumar to be "*compelling*" (§§31-32) and set out his reasons for doing so at [26] – [39]:

"*26. Beyond that, however, I have the misfortune to disagree, with the utmost respect, with the reasoning of Judge Davis-White in the relevant part of his judgment in Al Assam. I say this for two reasons, one which is of general relevance, and one which is specific to this case.*

27. The first reason is that it seems to me that, while it is correct to say that a freezing order holds the ring, it also seems to me that it is correct to say… that a freezing order holds the ring in a different way. In my judgment, in a substantially different way to an interim injunction.

28. … in the case of an interim injunction what is generally happening is that a court is allowing one party to enforce or rely on a right, or an obligation the existence of which has yet to be established. So, in that sense the court is allowing one party to behave as if the right has been established, in circumstances where the right still has to be established at trial and may not be established at trial.

29. In the case of a freezing order, things are rather different. The freezing order… is an ancillary order in aid of the relief which is sought in the relevant case. There is no such thing as a final freezing order. Once the freezing order has been granted, and subject to any subsequent application to vary or discharge, the freezing order then remains in place until trial. It may well be that the freezing order is obtained on a basis which is found not to be well founded at trial, but that, it seems to me, does not go directly to the question of whether the freezing order was correctly granted; rather it relates to the underlying relief which is sought.

30. In relation to the freezing order, it seems to me that what happens if the claim fails at trial is that the freezing order is no longer required to hold the ring because there are no assets to be protected or ring-fenced, because there is no right of recovery.

…

34. In relation to the free shot point [no. 7 of Mr. Hilliard QC's points], Mr Grant submitted that it is not a free shot at all, because all that is happening is that the costs are being reserved, and ultimately, depending on what happens at trial, the costs of the application for the freezing order may be recovered by virtue of a costs order made by the trial judge.

35. But that seems to me to miss the essential point, which is that if the general principle is that the costs of an application for a freezing order should be reserved, then the defendant does know that it is going to be able to oppose the freezing order, and possibly cause both parties to run up very considerable costs in relation to the freezing order, without having to face the day of reckoning in relation to those costs, assuming that it is unsuccessful, until a trial, which may come along at a much later stage, or may not come along at all, which may in turn leave the parties to negotiate what is going to happen in relation to the reserved costs. In litigation there is a very substantial difference between a set of costs which must be paid there and then by a party, and a set of costs which are reserved off to an indeterminate date in the future.

36. So it is for all those reasons, which together encompass what I have referred to as my first reason, that I find myself in the unfortunate position of disagreeing with the reasoning of Judge Davis-White in Al Assam.

37. The second reason is this, and it arises in the specific context of the discharge applications. If you have a situation, as in the present case, where a freezing order has been granted on a without notice application, and the respondent then launches an all-out attack on the freezing injunction, on the basis of non-disclosure, it seems to me not unreasonable, at least as a matter of general or starting principle, that the respondent should pay the costs of that attack, if the attack fails.

38. The question of non-disclosure essentially requires a comparison between what the court was told on the without notice application and what the court should have been told. The judge who is best placed to decide that question is the judge who hears the application for discharge of the freezing injunction, on the basis of alleged non-disclosure, on the return date. The question is not one, as it seems to me, which depends, or at least depends substantially, on how matters turn out at trial, but rather depends on an examination of matters as they stand on the relevant return date.

> *39. I have described that second reason as arising in the specific context of this case and in the specific context of the discharge applications, but I am also bound to say that it seems to me that those points can be said also to have quite substantial application to a case where there is simply an application for the continuation of a freezing order granted on a without notice basis, or simply an application for a freezing order where there has been no without notice application. Again, it seems to me not unreasonable, at least as a matter of general or starting principle that, if the respondent launches an all-out resistance to the continuation of the freezing order, and is unsuccessful, the respondent should have to pay the costs of that resistance. I am simply not persuaded by Mr Grant's submissions, characteristically eloquent as they were, that there is anything in the circumstances of freezing orders which requires that the starting principle should be that costs should be reserved."*

19. The Defendant submits that I should not simply follow numerical advantage and that the judgment in Al-Assam reflects the truer course and the better approach. The Defendant also submits that the approach in Al-Assam is justified given that the jurisdiction for both freezing injunctions and interim injunctions more generally is s.37 of the Senior Courts Act 1981. Accordingly, the Defendant submits that the balance of convenience and considerations of justice are at issue in the grant of all injunctions. Having referred me to various passages from the judgment in Al-Assam at [222] and [224] – [225], the Defendant also submitted that Edwin Johnson J. followed the same path as HHJ Davis-White KC "with very similar reasoning" before reaching the opposite conclusion.

20. I entirely accept the Defendant's submission that numerical advantage alone is not a good reason to prefer the approach urged by the Claimant over the approach contended for by the Defendant. However, for reasons which I will explain in more detail below, I nevertheless prefer the reasoning of Edwin Johnson J. in Harrington v Mehta and in the authorities such as Bravo and Kumar to that of HHJ Davis White KC in Al-Assam.

21. The fact that the court's jurisdiction to grant different orders stems from (or is confirmed by) the same statutory source does not mean that it follows that the normal approach to costs should be the same concerning each order.

22. Further, contrary to the Defendant's submission, assessing where the balance of convenience lies is not an element of the test for the granting or not of a freezing injunction in contrast to the test for the granting or not of an interim injunction. A court considering whether to grant a freezing injunction needs to step back and consider whether it is just and convenient to make the order but this is a different exercise to assessing the balance of convenience under the *American Cyanamid* test; see [8] of the judgment of Martin Spencer J in Bravo.

23. The Defendant is further wrong to suggest that the reasoning of Edwin Johnson J in Harrington follows the reasoning of HHJ Davis-White KC in Al-Assam. Edwin Johnson J expressly stated at [26] of his judgment that he disagreed with the reasoning in Al-Assam.

24. The Defendant sought to suggest that the judges in Bravo, Kumar and Harrington had over-analysed the distinction between freezing injunctions and interim injunctions and identified three similarities between the two types of injunctions, none of which are

persuasive. I have already dealt with the point concerning the fact that both types of injunction stem from the same jurisdiction. Second, it is correct that both types of injunction seek to hold the ring pending trial but the freezing injunction does so in a different way as explained by Edwin Johnson J in Harrington. Third it is correct that both types of injunction are made in circumstances where the ultimate result of the litigation is uncertain but the same can be said about any order made prior to trial but does not prevent costs awards being made in a party's favour.

25. I agree with the reasoning of Edwin Johnson J. at [27] to [30] in Harrington. While a freezing injunction and an interim injunction are both holding the ring, an interim injunction does so in the sense that a court is allowing one party to enforce or rely on a right or an obligation the existence of which has yet to be established. On an application for a freezing injunction, the position is different. The freezing injunction is an ancillary order in aid of the relief which is sought in the relevant case and the enforceability of any judgment subsequently granted. There is no such thing as a final freezing order which, if granted, remains in place until trial (unless varied or discharged). Further, even if the freezing order is granted on a basis which is held not to be well founded at trial, this does not go directly to the question of whether the freezing order was correctly granted at the time it was sought. As Martin Spencer J pointed out in Bravo, a finding that a claim fails on the basis of the evidence available at trial is not necessarily inconsistent with a finding on an application for a freezing injunction that the Claimant has a good arguable case. In this respect, the test for a freezing injunction is different to the test for whether a claim should succeed at trial.

26. Like Edwin Johnson J, I also find compelling the points made by Jonathan Hilliard KC in Kumar v Sharma that:

    i) A defendant has a choice of resisting continuance of a freezing order and thereby causing the costs of a return date to be incurred.

    ii) The test for a freezing order is different for whether a claim should succeed at trial.

    iii) If the basic principle were that costs would be reserved, the defendant would have a free shot at opposing the continuance of freezing order on a good arguable case ground. This it seems to me is a particularly cogent point in the context of the present Continuation Application where the Defendant's case changed substantially shortly before the hearing and where the Defendant has accepted for the purposes of that application that there is a risk of dissipation.

27. In this regard, I agree with Edwin Johnson J at [35], that, if the general principle were that the costs of a freezing order were to be reserved, then a defendant would know that it could oppose the freezing order and possibly cause both parties to run up very considerable costs without having to face the day of reckoning in relation to those costs (if unsuccessful) until a trial which may come along at a much later stage, or may not come along at all. There is a very substantial difference between a set of costs which must be paid then and there and a set of costs which are reserved until an indeterminate date in the future.

28. I also agree with Edwin Johnson J. that if a respondent launches an attack on a freezing injunction on the basis of non-disclosure and that attack fails, as it has here, it is not unreasonable that the respondent should pay the costs of that attack.

29. While in Harrington, there were applications to discharge the existing worldwide freezing order, which there are not in the present case, I do not consider this a reason to prefer the reasoning in Al Assam to the reasoning in Harrington.

30. In Al Assam, HHJ Davis-White KC found that none of the nine points relied on by Mr. Jonathan Hilliard KC (sitting as a Deputy High Court Judge) persuaded him that he should adopt a different approach in relation to freezing orders to that adopted for interim injunctions. I have already explained above why I prefer the reasoning of Mr. Hilliard KC in relation to his points (1) to (4) and (7) as set out in his judgment. So far as point (5) is concerned, I also agree that the fact that evidence as to good arguable case may overlap or be the same as that which is relevant to trial is not decisive. If a party advances evidence which is not sufficient on the return date to persuade the court that the other party does not have a good arguable case, then that party has failed at this interlocutory stage and should bear the costs of doing so. This is particularly the case in circumstances where the Defendant's case that there was no good arguable case turned on deploying extensive expert evidence which the Claimant had to meet and where the Defendant had to be aware that there was a real danger that this evidence would not be sufficient to persuade the Court that the Claimant's case was implausible irrespective of which test for good arguable case was adopted. Point (6) is essentially neutral in my view. In relation to point (8), having dealt with the issue of full and frank disclosure and the duty of fair presentation, I will be in a better position than the trial judge to deal with the costs of those issues. More generally, and consistent with point (9), the issues with which I have had to deal in connection with the question of whether to continue the injunction are ones which have arisen in relation to the question of whether the ordinary requirements for a freezing injunction are satisfied even if they may ultimately overlap with issues and evidence which may arise at trial.

31. For all the above reasons I find that as matter of approach, the ordinary approach in relation to freezing injunctions is that the court should make an order for costs following the hearing of a continuation application while reserving the costs of the original without notice application. That order is that the Claimant is entitled to its costs of the Continuation Application to be assessed on the standard basis if not agreed with the costs up to and including the first return date before Dias J. to be reserved. Even if I had concluded that such an order is not consistent with the ordinary approach, it is the order which I would make in any event given the circumstances of this case (in particular as set out in paragraphs 8 and 30 above).

What is the amount of any payment on account to be made to the Claimant?

32. The Claimant seeks a payment on account of £209,000.00 comprised of £103,000 for the Strike Out and Reverse Summary Judgment Applications (being roughly 60% of the costs shown in the Claimant's costs schedule for those applications served before the hearing) and £106,000 for the Continuation Application (being 60% of the costs shown in the Claimant's costs schedule for those applications but with the costs up and including the first return date before Dias J removed).

33. The Defendant submits that the amount sought is far too high and submits that:

i) In relation to the Strike Out Application, the issues were until 2 weeks before the hearing limited to two legal points on the effect of the Assignment, which did not require factual evidence and only limited expert evidence. The Defendant accepts that the position changed late in the day and that the Summary Judgment Application was also issued late in the day but says that the Claimant served no responsive evidence following the Defendant's change of position.

ii) Counsel's fees in relation to the Strike Out and Summary Judgment Applications are too high.

iii) In relation to the Continuation Application, the witness statements of Messrs. Patel and Mitchell served on 15 December 2023 are argumentative and in substance contain no evidence at all. Accordingly, the costs of preparing them should be disallowed.

34. The Defendant does not challenge the reduction made to the Claimant's Costs Schedule to take account of the costs incurred on the application for the freezing injunction and the hearing before Dias J.

35. In response, the Claimant points out:

i) That the Defendant's costs of the applications considerably exceed those of the Claimant. The Defendant's costs of the Strike Out and Summary Judgment Applications are said to be £539,529.72 and of the Continuation Application are said to be £251,321.72. In contrast, the Claimant claims £172,051.50 for the Strike Out and Summary Judgment Applications and £177,858.90 for the Continuation Application (after reduction for the reserved costs).

ii) Far from being a point in the Defendant's favour, the last-minute change to the Defendant's case on the Strike Out Application and the late Summary Judgment Application was an aggravating factor especially when coupled with the vague nature of the Defendant's Application Notice and Defence and the wide-ranging nature of the Defendant's expert evidence. The Claimant had to prepare to meet all points made which greatly increased costs.

iii) In relation to the Continuation Application, Patel 3 was dedicated mainly to evidence on risk of dissipation, a point which the Defendant eventually conceded. Mitchell 1 contained evidence addressing the Defendant's allegations of a breach by the Claimant and its lawyers of the duty of full and frank disclosure and going to points which the Defendant dropped following receipt of that evidence.

36. Having considered the Claimant's Costs Schedules and reminded myself of the contents of Mr. Patel's third Affidavit and Mr. Mitchell's first Affidavit:

i) I accept the Claimant's submission in relation to the Strike Out Application and Summary Judgment Application that the Defendant's approach to those applications increased rather than decreased the work to be done on behalf of the Claimant and that the Claimant did have to prepare to meet the various points made.

ii) The Strike Out and Summary Judgment Applications were heavy applications with a significant last-minute change in the Defendant's case and difficult points of evidence and law to consider. While Counsel's fees are substantial, I am not persuaded at this stage that they are at a level where I should discount any payment on account specifically in relation to those fees. Both parties were represented at the hearing by leading and junior counsel.

iii) I also accept that both Patel 3 and Mitchell 1 contained evidence of the type described by the Claimant and that there was no reason to discount the costs of producing that evidence.

37. Reviewing the Claimant's Costs Schedules and taking into account that a reduction has been made to the Claimant's costs of the Continuation Application to reflect the costs of the original freezing injunction application and the costs up to and including the hearing before Dias J, I am satisfied that it is appropriate to order a payment on account of £209,000.

Conclusion

38. For the reasons set out above, I order that:

i) The Defendant shall pay the Claimant's costs of the Strike Out and Summary Judgment Applications to be assessed if not agreed.

ii) The Defendant shall pay the Claimant's costs of the Continuation Application to be assessed if not agreed. The costs up to and including the first return date before Dias J. should be reserved.

iii) The Defendant shall pay the Claimant the sum of £209,000 on account of the costs liabilities set out in sub-paragraph (i) and the first sentence of sub-paragraph (ii) above.

39. I thank the parties for their helpful written submissions and would be grateful if the parties could provide me with a final form of order for approval incorporating the costs orders made above into the draft minute of order previously put before me.