

JERSEY / JUDGMENT

Design Food Limited v Vieira

[2023] JRC 257 (20 December 2023)

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[2023] JRC 257 [New search] [Help] Costs [2023]JRC257 Royal Court (Samedi) 20 December 2023
Before : M. J. Thompson, Commissioner, sitting alone Between Design Food Limited
Appellant And Antonio Vieira Respondent Mr Risoli attended in person on behalf of the
Appellant. Advocate J. N. Heywood for the Respondent. judgment ON COSTS the
commissioner:

Introduction

1. This judgment contains my decision on costs following on from the Royal Court's substantive judgment in this matter dated 9 October 2023 reported at Design Food Limited v Vieira

[2023] JRC 182 dismissing the Appellant's appeal against a decision of the Employment Discrimination Tribunal dated 20 January 2023 ("the Substantive Judgment"). 2. Following on from the Substantive Judgment, the Respondent applied for his costs of the appeal on an indemnity basis and also sought an order that Mr Risoli be made jointly and severally liable for any costs order made against the Appellant. 3. In this judgment I firstly deal with the application for indemnity costs and secondly I deal with whether any costs order made against the Appellant should be made against Mr Risoli personally. An order for indemnity costs 4. The basis upon which indemnity costs is generally ordered in this jurisdiction is well known and was helpfully summarised at paragraphs 6 to 9 of the decision in *MacFirisigh v CI Trustees and Executors Limited*

[2016] JRC 02A. 5. I have referred to this summary in particular because, having set out the general principles, the Court also stated the following at paragraphs 10 and 11 of that judgment which I set out in full: "10. Advocate Baxter also relied by way of further guidance on the decision of Mr Stephen Jourdan QC in *Richmond Pharmacology Limited v Chester Overseas Limited*

[2014] EWHC 3418 (Ch) . Mr Jourdan said (at para.4):- "I consider that the applicable principles, in a case where indemnity costs are claimed on the ground that the paying party's conduct was unreasonable, so far as relevant to this claim, are as follows:- (a) As the very word 'standard' implies, the standard basis will be the normal basis of assessment where the circumstances do not justify an award on an indemnity basis. For there to be an order for assessment on the indemnity basis, there must be some conduct or some circumstance which takes the case out of the norm. That is the critical requirement. (b) Dishonesty or moral blame does not have to be established to justify indemnity costs. But indemnity costs are appropriate only where the conduct of the paying party was unreasonable to a high degree. "Unreasonable" in this context does not mean merely wrong or misguided in hindsight. (c) The court must therefore decide whether there is something in the conduct of the action, or the circumstances of the case in general, which takes it out of the norm in a way which justifies an order for indemnity costs. (d) The discretion to award indemnity costs is a wide one and must be exercised taking into account all the circumstances and considering the matters complained of in the context of the overall litigation. Cases vary very considerably and each case is highly fact-dependent. (e) It is important not to lose sight of the essential requirement of unreasonable or inappropriate conduct overall and not to treat examples of such which may amount to such conduct as necessarily constituting it. The essential question is whether the relevant conduct makes it just as between the parties to remove from the paying party the twofold benefit of an order on the standard basis, as compared with an order on the indemnity basis, that is to say, to enable the receiving party to recover its costs, reasonably incurred and reasonable in amount, with the benefit of the doubt being given to the receiving party and without the receiving party having to address (and persuade the court upon) the subject of proportionality. (f) The pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, provided that the claim was at least arguable. However, the pursuit of a hopeless claim (or a claim which the party pursuing it should have realised was hopeless) may lead to such an order. In *Wates Construction Ltd v HGP Greentree Alchurch Evans Ltd*

[2006] BLR 45 at [27] HHJ Coulson QC said: "I consider that to maintain a claim that you know, or ought to know, is doomed to fail on the facts and on the law, is conduct that is so unreasonable as to justify an order for indemnity costs." (g) If a claimant casts its claim disproportionately wide, and requires the defendant to meet such a claim, there may be no injustice in denying the claimant the benefit of an assessment on a proportionate basis or in the claimant forfeiting its normal right to the benefit of the doubt on reasonableness. h) The making of a grossly exaggerated claim may be a ground for indemnity costs. (i) The rejection of reasonable attempts to settle will not normally, by itself, justify an award of indemnity costs. In *Kiam v MGN Ltd* (No. 2)

[2002] EWCA Civ 66 ,

- [2002] 1 WLR 2810 at [13], Simon Brown LJ said: "... it will be a rare case indeed where the refusal of a settlement offer will attract under Part 44 not merely an adverse order for costs, but an order on an indemnity rather than standard basis." However, if coupled with other factors, it may do so: for an example see *Barr v Biffa Waste Services Ltd (Costs)*
- [2011] EWHC 1107 (TCC) ; 137 Con LR 268 (Coulson J)." 11. Advocate Garrood submitted that I should treat the Richmond decision with caution, on the basis that it reflected the costs regime under the English Civil Procedure Rules ("the CPR") and not the different provisions of the Royal Court Rules. It is correct that the Royal Court Rules do not contain any express reference to the concept of proportionality which is a feature of the CPR. But, as Advocate Baxter pointed out by reference to para.3 of the Richmond Pharmacology decision, the CPR themselves do not contain any guidance as to the basis on which the court should direct assessment on the indemnity, rather than the standard, basis. In those circumstances I see no reason why I should not have regard to the matters listed in para.4 of the Richmond Pharmacology decision." 6. This summary is relevant is because the issue I had to determine was whether the Appellant's claim was one that was at least arguable or was one that was hopeless or doomed to fail. 7. Mr Risoli, who appeared in person at the costs hearing (although not at the hearing of the decision that led to the Substantive Judgment), argued that the case was arguable because leave to appeal was granted by the Deputy Bailiff and therefore the appeal was not without merit. The fact that the appeal was unsuccessful did not mean that either it was hopeless or that he had been acting in bad faith. He also relied on the fact that he had the benefit of legal advice both before the Tribunal and at the appeal. 8. Advocate Heywood for the Respondent argued that every ground of appeal advanced had failed. Once the case was subject to full scrutiny at the substantive hearing, not a single aspect of the appeal was sustainable. 9. Mr Heywood also criticised Mr Risoli for acting in bad faith. This allegation was made by reference to criticisms of the Appellant's conduct of the case before the Tribunal which was summarised at paragraph 29 of the Respondent's skeleton filed for the hearing leading to the Substantive Judgment. 10. In relation to these contentions, firstly simply because the Deputy Bailiff granted leave to appeal does not in my judgment prevent me from making an indemnity costs order. This is firstly as a matter of principle because the judge determining the matter will be in a different position from a judge granting leave to appeal and, as the judge exercising the discretion as to what costs order to make, will be best placed to evaluate whether the unsuccessful grounds advanced were arguable or crossed the line to justify an indemnity costs order. 11. Secondly in this case, while being satisfied that the threshold for leave to appeal had been met, the Deputy Bailiff did not give any reasons for reaching that conclusion. The application for indemnity costs in this case does not therefore have to deal with the potential difficulties of an appellant pursuing an application for leave to appeal and being unsuccessful where the judge granting leave has made observations on the merits of the appeal in granting leave. 12. Turning now to the grounds of appeal, these were set out at paragraph 7 of the Substantive Judgment as follows: "7. The Appellant's grounds of appeal can be summarised as follows: (a) There was

no evidence to support the judge's finding of fact that the conduct of the Respondent, which the Appellant considered justified its decision to dismiss, did not take place. (b) Nor was there evidence to substantiate the finding that Mr Risoli was not telling the truth. (c) The decision of the Tribunal was obviously wrong. (d) The Tribunal also failed to have regard to the belief of Mr Risoli that he had reasonable grounds to dismiss the Respondent summarily and therefore failed to direct itself in relation to this belief. (e) The Tribunal failed to consider that there were two grounds for dismissal, namely the entry by the Appellant into Mr Risoli's flat and bedroom without permission and his subsequent refusal to leave the premises. The Appellant contended that in relation to the Respondent refusing to leave the premises, as required by Mr Risoli on behalf of the Appellant, this was a lawful instruction given by an employer which an employee had failed to obey. The Tribunal had therefore failed to establish whether this was a reason for dismissal. (f) The Tribunal failed to consider whether the Appellant's decision to dismiss went beyond the decision that a reasonable employer might reasonably have taken. (g) The Tribunal erred in law by substituting the Deputy Chair's own view of the facts relating to the Respondent's conduct for the view formed by the Appellant's decision maker, Mr Risoli, of that conduct. (h) The Tribunal further erred in its approach when assessing wrongful dismissal and conflated the different tests required for unfair and wrongful dismissal. (i) The Tribunal misunderstood and misapplied the law regarding the burden of proof in Article 64(4) of the Employment (Jersey) Law 2003 As Amended ("the Employment Law"). The error was that the judge recorded in the leave decision that the Appellant was required to discharge the burden of persuading the Tribunal that the decision to dismiss was reasonable." 13. In relation to paragraphs (a) to (c), these can be taken together. What the Appellant was seeking to do was to overturn the findings of fact of the Tribunal. This is a high threshold and what was required to meet that threshold was evidence that was overwhelming. In this case, the Tribunal found that Mr Risoli had made untrue statements to the police (see paragraph 41 of the Substantive Judgment). Given these statements made which were not challenged (rightly) on appeal, the grounds seeking to interfere with the Tribunal's finding of fact were doomed to failure. 14. In relation to ground (d), as noted in the Substantive Judgment, this argument was hopeless and as referred to at paragraph 45 of the Substantive Judgment, this submission came from the other side of the looking glass. The context of the authority relied on by the Appellant on was completely different and related to the situation where the decision maker dismissing an employee had not been involved in the conduct that led to the dismissal. Given that the Tribunal had clearly found in favour of the Respondent and had rejected Mr Risoli's evidence, as it was entitled to, to then advance a submission that Mr Risoli's evidence did not matter, it was only his belief that was relevant, was bound to fail as a contention. 15. In relation to ground (e), as noted in the Substantive Judgment, this was not an argument advanced before the Tribunal although the Deputy Chair at the hearing before him sought clarification of the case that the Appellant was advancing. This reliance on a second ground for dismissal was in any event also bound to fail for the reasons set out in the Substantive Judgment because no reasonable employer would have dismissed the Respondent. Accordingly, ground (e) was

also doomed to failure. 16. Ground (f) did not arise in relation to the original decision reached by the Tribunal because the Appellant failed to establish a reason for dismissal and the appeal was never going to succeed for reasons as summarised above. To the extent that the Appellant was relying on a new reason for dismissal, that new reason was never going to lead a reasonable employer to dismiss for that new reason. 17. Ground (g) was also bound to fail for the same reasons that ground (a) to (c) were going to fail. 18. Ground (h) was not pursued at the hearing by Advocate Ingram (quite rightly). Accordingly, it was also a hopeless ground. 19. The only ground therefore where the Appellant was successful was ground (i). However, this took the Appellant nowhere because the burden of proof issue identified in Article 64(4) only arose if the Appellant established a valid reason for dismissal which did not occur. This ground was therefore never going to lead to a successful appeal. 20. Accordingly, I am satisfied that in relation to all the grounds relied on by the Appellant, they were hopeless or alternatively doomed to failure or were never going to succeed. An order for indemnity costs is therefore justified against the Appellant and I order accordingly. An order against Mr Risoli 21. In relation to making a costs order against a non-party, once I was put on notice by the Respondent that it was seeking a costs order against Mr Risoli personally, I drew the parties attention to Leeds United Association Football Club Limited v The Phone In Trading Post trading as Ad Match

- [2011] JLR Note 22 . 22. The headnotes of that decision states as follows: "Civil Procedure-costs-costs against non-party Held: (1) A costs order would be made against the director personally for the costs of and incidental to the application for leave to appeal. Under art. 16 of the Court of Appeal (Jersey) Law 1961, the court had full power to determine by whom and to what extent the costs were to be paid. In the exercise of its discretion to make an order for costs against a non-party, the court would consider the following guiding principles: (i) costs orders against non-parties were exceptional, in that they involved considerations outside the ordinary cases in which parties pursued or defended claims for their own benefit and at their own expense. Such cases were fact specific and the ultimate consideration was justice as between the litigant seeking the order and the person against whom it was sought; (ii) costs orders would not generally be made against a mere funder of litigation, i.e. a person with no personal interest in the litigation, who did not stand to benefit from it, was not funding it as a matter of business and did not seek to control its course; (iii) ordinarily, a non-party would not be made liable for costs if the costs would in any event have been incurred even without his involvement in the proceedings; (iv) difficult cases would arise in which a non-party funded litigation designed to advance his own financial interests;
- (v) a non-party who promoted and funded proceedings by an insolvent company solely or substantially for his own financial benefit should be liable for the costs if the claim, defence or appeal failed. Careful consideration would be required in the case of an individual director who participated in or funded litigation. When deciding whether or not to exercise its discretion to award costs against a director personally, the court had to determine what lay behind his involvement. If he promoted or funded proceedings by an insolvent company

solely or substantially for his own financial benefit, he should be liable for the costs if his claim or defence failed. If, however, he could realistically be regarded as acting in the interests of the company (especially its shareholders and creditors) rather than in his own interests, it was likely that a costs order would not be made against him (*Dymocks Franchise Systems (NSW) Pty. Ltd. v. Todd*,

- [2004] 1 WLR 2807 , applied); (vi) the guiding considerations were reason and justice; and (vii) ordinarily, a non-party, non-funder, with no personal interest in litigation and who did not stand to benefit from it would not be liable for the costs incurred by an unsuccessful party without a full hearing of the merits upon which it was contended that potential liability arose (*Planning & Environment Min. v. Yates*, 2008 JLR 486 , applied). In the present case, it was just and reasonable for the director to be found personally liable for the costs of and incidental to the application for leave to appeal. The defence to the proceedings was not maintained for the benefit of the defendant and the director in his capacity as a shareholder but rather for his own benefit as an individual. The fact that other third parties might have an interest in the outcome of the proceedings did not assist him. His efforts had made the defence possible, he had decided to apply for leave to appeal, he had prepared and filed the necessary papers and represented the defendant in court. His actions, and not those of other third parties, had caused the plaintiffs to incur costs in opposing the application for leave to appeal." 23. In the unreported judgment reported at *Leeds v AdMatch*
- [2011] JCA 110 , the principle of a costs order against a non-party was discussed at paragraphs 3 to 5 as follows: "3. The general principles by which the court will be guided in deciding whether or not to exercise its discretion to make an order for costs against a non-party were recently enunciated by this court in *Planning and Environment Minister v Yates*
- [2008] JLR 486 . At paragraph 74, McNeill J. A., who delivered the judgment of the court, said this:- "(i) Costs orders against non-parties will be exceptional in the sense of having considerations outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense. The exceptional considerations will be fact-specific and the ultimate consideration will be that of justice as between the litigant seeking the order and the person against whom the order is sought. "(ii) Generally speaking, the discretion will not be exercised against "pure funders," namely persons with no personal interest in the litigation, who do not stand to benefit from it, are not funding it as a matter of business, and in no way seek to control its course. "(iii) Ordinarily, a non-party will not be made liable for costs if those costs would in any event have been incurred even without such non-party's involvement in the proceedings. "(iv) Difficult cases will arise where non-parties fund litigation designed to advance the funder's own financial interests. "(v) Where a non-party promotes and funds proceedings by an insolvent company solely or substantially for his own financial benefit, that non-party should be liable for the costs if the claim, defence or appeal fails. "But the position of an individual director who participates in or funds litigation will require careful

consideration. "(vi) The guiding considerations are reason and justice. "(vii) Ordinarily, a non-party, non-funder, with no personal interest in the litigation and who does not stand to benefit from it will not be liable for the costs incurred by an unsuccessful party without a full hearing of the merits upon which it is contended that potential liability arises." 4. In advising the need for careful consideration in cases where an individual director participates in or funds litigation by his or her company, McNeill J. A. had in mind that, when deciding whether or not to exercise its discretion to award costs against the director personally, the court should determine what lay behind his or her involvement. Where a director promotes and funds proceedings by an insolvent company solely or substantially for his own financial benefit, he should be liable for the costs if his claim or defence or appeal fails. If, however, he can realistically be regarded as acting rather in the interests of the company (and more especially its shareholders and creditors) than in his own interests, it is likely that a costs order will not be made against him. (See *Dymocks Franchise Systems (NSW) Pty. Ltd. v. Todd W. L. R. 2807*, per Lord Brown of Eaton-under-Heywood, at paragraph 29). 5. In opposing the plaintiffs' application for an award of costs against Mr and Mrs Weston, the defendant submits, among other things, that it is a "standalone" defendant which has been defending these proceedings, "not only for the benefit of itself and its shareholder (Mr Weston)", but also for certain creditors. It argues that it has also been protecting the interests of an associated company and its shareholders and "other family shareholders of the Jersey companies in which Mr Weston is (and ALWAYS has been) a minority shareholder and Mr Weston's family and estate in the event of his death". (Original emphasis)" 24. Advocate Heywood also referred me to a first instance decision of Patricia Robertson KC sitting as a Deputy Judge of the High Court in *Asprey Capital Limited v Rediresi Limited*, Mr Annuj Gupta

[2023] EWHC 28 . 25. Paragraphs 9 to 11 of that judgment state as follows: "9. The relevant guidance has been usefully summarised by the Court of Appeal, after a comprehensive survey of the relevant cases, in *Goknur v Aytac*

[2021] EWCA Civ 1037 (Lord Justice Coulson, with whom the rest of the Court agreed, at [40]). I have substituted into the citation below the full references for the cases there referred to: "a) An order against a non-party is exceptional and it will only be made if it is just to do so in all the circumstances of the case (*Gardiner v FX Music Limited*

(2000) WL 33116500 (27 March 2000, unreported), *Dymocks Franchise Systems (NSW) Pty Limited v Todd and others*

[2004] UKPC 39 ,

[2004] WLR 2807 , *Threlfall v ECD Insight Limited and Anr .*

[2015] EWCA Civ 144 ;

[2014] 2 Costs LO 129).

- b) The touchstone is whether, despite not being a party to the litigation, the director can fairly be described as "the real party to the litigation" (Dymocks, Goodwood Recoveries v Breen [2005] EWCA Civ 414 , Threlfall).
- c) In the case of an insolvent company involved in litigation which has resulted in a costs liability that the company cannot pay, a director of that company may be made the subject of such an order. Although such instances will necessarily be rare (Taylor v Pace Developments Ltd [1991] BCLC 406), s.51 orders may be made to avoid the injustice of an individual director hiding behind a corporate identity, so as to engage in risk-free litigation for his own purposes (North West Holdings Plc (In Liquidation (Costs) [2001] EWCA CIV 67). Such an order does not impinge on the principle of limited liability (Dymocks, Goodwood, Threlfall).
- d) In order to assess whether the director was the real party to the litigation, the court may look to see if the director controlled or funded the company's pursuit or defence of the litigation. But what will probably matter most in such a situation is whether it can be said that the individual director was seeking to benefit personally from the litigation. If the proceedings were pursued for the benefit of the company, then usually the company is the real party (Metalloy Supplies Ltd v MA (UK) Ltd [1997] 1 WLR 1613). But if the company's stance was dictated by the real or perceived benefit to the individual director (whether financial, reputational or otherwise), then it might be said that the director, not the company, was the "real party", and could justly be made the subject of a s.51 order (North West Holdings, Dymocks, Goodwood).
- e) In this way, matters such as the control and/or funding of the litigation, and particularly the alleged personal benefit to the director of so doing, are helpful indicia as to whether or not a s.51 order would be just. But they remain merely elements of the guidance given by the authorities, not a checklist that needs to be completed in every case (Systemcare (UK) Limited v Services Design Technology [2011] EWCA Civ 546).
- f) If the litigation was pursued or maintained for the benefit of the company, then common sense dictates that a party seeking a non-party costs order against the director will need to show some other reason why it is just to make such an order. That will commonly be some form of impropriety or bad faith on the part of the director in connection with the litigation (Symphony Group plc v Hodgson [1994] QB 179, Gardiner, Goodwood, Threlfall).

- 9) Such impropriety or bad faith will need to be of a serious nature (Gardiner, Threlfall) and, I would suggest, would ordinarily have to be causatively linked to the applicant unnecessarily incurring costs in the litigation.
10. Useful as this guidance is, this is, in the end, a highly fact-specific jurisdiction. As Lord Justice Moses has pithily observed, "there is now an abundance of authority on the absence of any need for abundant authority on the principles which should guide a judge as to whether to make a third party order for costs." (Alan Phillips Associates Ltd v Terence Edward Dowling t/a The Joseph Dowling Partnership & Ors

[2007] EWCA Civ 64 , at [31].)

11. "Exceptional" simply means "outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense" Dymocks at [25]. In the particular context where the order is sought to be made against the director or shareholder of an insolvent company, there must be some factor that makes it just to make the order, notwithstanding the principle of limited liability. The decided cases offer examples but are not exhaustive of the factors that might be relevant, or the ways in which these might combine in a given case to tip the balance. As the Court of Appeal stated in Deutsche Bank v Sebastian Holdings

[2016] EWCA Civ 23 at [62]: "...the only immutable principle is that the discretion must be exercised justly." 26. Advocate Heywood's complaint, by reference to these principles, was that his client had still not been paid anything by the Appellant in relation to his claim for unfair dismissal, yet the Tribunal had now assessed that the Respondent was due a minimum of £10,932 and might be due up to £14,199 depending on whether his weekly pay was £400 per week or £510 per week. The Tribunal had also made an order requiring the minimum sum due to the Respondent to be paid by 17 November but nothing had been paid. 27. While the Respondent was not alleging that Design Foods was insolvent, Advocate Heywood was critical of Mr Risoli because he was deliberately refusing to pay what was due to the Respondent because Mr Risoli did not accept the decisions of the Court and the Tribunal. This therefore justified Mr Risoli being made jointly and severally liable for any costs order made against the Appellant so that the Respondent could enforce payment. The Court should not be a party to Mr Risoli deliberately frustrating orders of the Tribunal. 28. Mr Risoli explained that the business of the Appellant was significant. It had five employees as well as himself. It was up to date with payments due to all other creditors, but times were difficult. Other than paying himself an annual salary, he explained that he was not making any other money from Design Foods. 29. Mr Risoli also started to refer to without prejudice offers he had made. With the agreement of Advocate Heywood for the Respondent, I permitted him to do so. Mr Risoli explained that he had offered to pay £4,000 in May 2023 which was after leave to appeal had been granted but before the hearing leading to the Substantive Judgment. After the Substantive Judgment, he had offered to pay £100 per month. He referred to these offers to emphasise that he was not acting in bad faith and was offering what could be afforded. It was also clear from his

address to the Court that Mr Risoli disagreed with the Tribunal's findings and the Court's rejection of the appeal. 30. In my judgment, this case is very different from the scenario advanced in *Leeds v Ad Match* or in the *Asprey* case which related to a non-party funding proceedings by an insolvent company from which that party was going to benefit solely or substantially. What is therefore required to justify an order against Mr Risoli personally, as the *Asprey* judgment noted at paragraph (f), is some form of impropriety or bad faith on the part of the director in connection with the litigation. The impropriety or bad faith would also have to be of a serious nature and would ordinarily have to be causatively linked to a party unnecessarily incurring costs. 31. In this case, what the Respondent is facing is someone with strong feelings but who did have legal advice, both before the Royal Court and the Tribunal. In particular in relation to the conduct of the appeal before the Royal Court, there is no conduct which could be said to amount to impropriety or bad faith. Although the arguments advanced by the Appellant, in my judgment, were hopeless and were doomed to failure, there is a distinction between pursuing hopeless arguments and pursuing them in bad faith or improperly. I am not satisfied that Mr Risoli was conducting the appeal in such a manner. 32. The fact that the Respondent has not been paid by the Appellant in my judgment also does not justify a costs order being made against Mr Risoli personally. When any party brings proceedings to recover monies or damages, there is always the risk that party will not be paid. It is also clear from Mr Risoli's submissions that the Respondent is not dealing with a shell company that has no assets or value. It is therefore open to the Respondent either to try to wind up the Appellant by using the procedure in chapter 4 of the Companies (Jersey) Law 1991 through service of a statutory demand or, alternatively, given the substance of the business of the Appellant, it would appear to be open to the Respondent to require the Viscount to seize funds from bank accounts operated by the Appellant. While either step may lead to some form of arrangement of instalments being agreed between the Appellant and the Respondent, as I indicated in Court an offer of £100 per month for a debt of at least £10,000 is wholly unrealistic having regard to the turnover of the business as it was described to me by Mr Risoli. 33. If the Appellant therefore wishes to avoid having to deal with either the threat of bankruptcy or interference with its cashflow through monies being seized as part of an enforcement procedure, the Appellant needs to take a realistic approach to discharging the debt due to the Respondent. This could be by borrowing funds or agreeing a suitable instalment plan. However, the fact that this has not occurred to date does not justify an order for costs against Mr Risoli personally. Although he is placing his own business in jeopardy, by not discharging what the Tribunal and the Court have found to be due, whatever Mr Risoli might think of that decision, he has not conducted the litigation in bad faith or in a manner that can be said to amount to impropriety so as to justify a costs order against him. The second part of the Respondent's application is therefore refused. 34. In relation to the costs of this costs argument, as each party has succeeded on one issue but failed on the other, each party shall bear their own costs. *Authorities Design Food Limited v Vieira*

[2023] JRC 182 . MacFirbisigh v CI Trustees and Executors Limited

[2016] JRC 02A. Leeds United Association Football Club Limited v The Phone In Trading Post trading as Ad Match

[2011] JLR Note 22 . Leeds v AdMatch

[2011] JCA 110 . Asprey Capital Limited v Rediresi Limited, Mr Annuj Gupta

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