

Neutral Citation Number: [2019] EWHC 393 (CH)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

The Rolls Building
7, Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 18 January 2019

BEFORE:

CHIEF MASTER MARSH

BETWEEN:

FINANCIAL CONDUCT AUTHORITY

Claimant

- and -

SKINNER & OTHERS

Defendants

MR PURCHASE appeared on behalf of the Claimant
The Fifth and Sixth Defendants appeared in person

JUDGMENT
(As Approved)

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1. CHIEF MASTER MARSH: I am now dealing with the second application before me today, which is an application by the claimant for an interim payment as against the third, fourth, fifth and sixth defendants. The claimant relies on CPR 25.7(1)(c) on the basis that the court can be satisfied that if the claim went to trial, the claimant would obtain judgment for a substantial amount of money, other than costs, whether or not the defendant is one of a number of defendants to the claim.
2. If the court is satisfied under that rule, the requirement under subparagraph (4) is that the court must not order an interim payment of no more than a reasonable proportion of the likely amount of the final judgment.
3. The approach to the claim is that under section 382 FSMA, the court may exercise its powers against a party who has been either in contravention, as it is said the companies have been, or knowingly concerned, either as to profits which have accrued or a loss. The court may require a person to pay either profits, a loss or a combination of those two items. The underlying consideration is what is a just amount.
4. In light of the admissions in this case, it is easy to be satisfied that if the claim went to trial the claimant would obtain judgment. The amount that was obtained by way of investment in aggregate is something of the order of £1.5 million.
5. So far as the defendants are concerned, the sums they obtained, when netted down, are rather less than £1.5 million and the authority in its evidence, to which there has been no response, has assessed that the fifth defendant, Mr Mongalar, obtained the sum of £142,731 and Mr Miller obtained £132,270. As to the two companies (the two companies being operated jointly) they obtained the sum of £238,319. Those sums are, based on Mr Taylor's evidence, the minimum sums which are likely to be found to be appropriate if the matter goes to trial.
6. However, the court has a judgment to exercise at the trial and it is open to the court to have regard to broader factors. It is not merely a matter of arithmetic. Mr Purchase has fairly and correctly drawn my attention to a requirement on the part of the court to have regard to the financial position of a defendant on the basis that, if there is evidence of an inability to pay or an effect of making an order on other matters such as an ability to defend, the court should take that into account.
7. There is no doubt here that the order from the last hearing required the defendants to provide evidence of their case and there is a very clear email to the defendants, dated 8 January 2019, which repeats the need to provide financial information if the defendants wish to rely on it. It is a matter for the defendants to provide this information. If they do not do so, the court cannot assume that there is a shortage of money.
8. Mr Miller has said, and I understand the point he makes, that he and Mr Mongalar are overwhelmed with this case and they do not find it easy to deal with. Of course, I fully understand their difficulty. The case is not straightforward and they do not have the benefit of legal advice. There is, however, as it appears to me, an element of what

I might describe as putting their heads in the sand and not dealing with matters when they are capable of doing so. I am particularly impressed with the email sent on 8 January 2019 by the claimant which spelt out the position in the clearest possible terms. Mr Miller and Mr Mongalar could have been in no doubt about what they were required to do.

9. I have considered whether it would be just to leave over the question of financial means to enable the defendants to put in evidence, but I have concluded that a full opportunity has been given to them to provide this information and I cannot see it is necessary or just to adjourn today's hearing and adjourn this decision.
10. I do have in mind, however, that the discretion is a broad one and the court is required to make an order of no more than a reasonable proportion of the likely amount. I am not in a position to second guess what approach the court will take at a trial as to apportionment of blame or whether that is a relevant matter. However, I am able to come to a view about the minimum sums by taking the figures that I have referred to earlier in this judgment and taking a proportion of them by rounding them down to what I think is a reasonable proportion.
11. In the case of the companies, I am going to make an order jointly and severally so that each company has a liability for £150,000.
12. In the case of Mr Mongalar, I am going to make an order as against him of £100,000 and as against Mr Miller, an order of £90,000.
13. I am satisfied that those are orders which are just and appropriate in the circumstances.

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This transcript has been approved by the Judge