

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMPANIES LIST (ChD)**

Rolls Building  
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Fetter Lane  
London  
EC4A 1NL

BEFORE:

**MR JUSTICE ADAM JOHNSON**

BETWEEN:

**MICHAEL JOHN ISAAC**

**PETITIONER**

**- and -**

**TAN SRI DATO'VINCENT TAN**  
**CARDIFF CITY FOOTBALL CLUB (HOLDINGS)**  
**LTD**

**(1) RESPONDENT**  
**(2) RESPONDENT**

**Legal Representation**

Mr James Rudall (Counsel) on behalf of the Applicant  
Ms Emily Betts (Counsel) on behalf of the Respondents

**Judgment (Costs)**

Judgment date: 30 November 2022

Reporting Restrictions Applied: No

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## **Mr Justice Adam Johnson:**

1. I have to deal with the question of costs arising as a result of my Judgment following trial in these proceedings: [2022] EWHC 2023 (Ch). In doing so I will assume familiarity with the background to the case, as described in that Judgment.

### **The Parties' Submissions**

2. As to costs, Ms Betts for the Respondents says the position is simple. She says the Respondents successfully resisted Mr Isaac's Petition in the sense that they defended the one live allegation of unfair prejudice following my ruling at the start of the trial. Therefore, Mr Isaac was unsuccessful overall and an order for costs should be made against him.
3. Ms Betts also seeks an order for a payment on account pending detailed assessment. She points to costs budget figures approved by ICC Judge Burton in June 2020. By then, costs already incurred by the Respondents came to roughly £125,000, and the budget allowed prospective costs in the amount of roughly £552,000, making a total of roughly £677,000 plus VAT. The Respondents' solicitor has confirmed in a witness statement that the incurred costs go beyond those in the approved budget. Against that background, the Respondents seek an interim payment of roughly £602,000 corresponding to 70% of the incurred costs at the time of the costs budget and 90% of the approved budgeted costs.
4. In making her submissions, Ms Betts referred to a number of authorities dealing with the making of interim payments on account in cases where costs budgeting has been applied. In *Thomas Pink Ltd v Victoria Secret* [2014] EWHC 3258 (Ch), Birss J, as he then was, referred to the impact of CPR 3.18 as meaning that the court, when assessing costs on the standard basis, will not depart from approved or agreed budgeted costs unless satisfied there is a good reason to do so (see at [52] and [59]), and therefore selected a figure of 90% of the receiving party's budget as a figure to be paid on account (see at [60]).
5. Likewise, in *MacInnes v Gross (No 2) (Costs and Consequential Matters)* [2017] EWHC 127 (QB), Coulson J, as he then was, endorsed the principle that a 10% reduction to a party's budgeted costs is "the maximum deduction that is appropriate in a case where there is an approved costs budget" (see at [28]).
6. For Mr Isaac, the unsuccessful petitioner, Mr Rudall resisted the idea that there should be an order for costs against Mr Isaac. He says that the Court has a general discretion and is required under CPR 44.2 to take account of all the circumstances. He has also referred to a number of authorities including in particular the decision Jackson J, as he then was, in *Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd (No 7)* [2008] EWHC 2280 (TCC).
7. Against that background, Mr Rudall made broadly the following points:
  - 1) It is altogether too crude simply to regard Mr Tan as the victor when important findings were made against him, in particular as to his conduct and motives.
  - 2) The trial ultimately involved determination of only two points, namely the question of unfair prejudice arising from the 5:2 Offer and the question of the value to be

attributed to Mr Isaac's shares. On the second question, Mr Isaac was, in substance, the victor because Mr Tan had always maintained the position that the shares were worthless and the conclusion of the Judgment (see [157]) was that the shares were worth roughly £563,00 after discounting.

3) The Respondents' costs budget in June 2020 does not provide a reliable guide as to what costs should properly be recoverable on a detailed assessment following trial because here the trial dealt only with the two issues I have already mentioned. So it does not follow, even if the Respondents are entitled to an order for their costs, that they should be entitled to an interim payment calculated on the basis they suggest.

4) There appear to be very good reasons for an appeal.

8. The upshot, argues Mr Rudall overall, is that each side should bear their own costs or alternatively there should be an issues based costs order and, in any event, there should be no order for a payment on account because there is insufficient certainty to allow one to be made.

## **Discussion & Conclusions**

### Incidence of Costs/Issues-based Costs Order

9. I propose to deal with matters in the following way.
10. To begin with and taking Mr Rudall's last point first, I think it irrelevant in determining the incidence of costs that there may be an appeal. That may be relevant to the question of whether any costs Order should be stayed pending appeal, but in my judgment it has no bearing on whether an order should be made and on the appropriate form of order.
11. Further, turning to the matters determined in my judgment following the trial, it does seem to me appropriate to regard the Respondents as the successful parties overall. That is because the substance of the relief sought by Mr Isaac was a finding of unfair prejudice and an order for the acquisition of his shares. The result of the trial was a finding that there was no unfair prejudice and that there should be no Order for Mr Tan to buy out Mr Isaac's shareholding.
12. I do not think it alters this overall conclusion to say that I made findings that Mr Tan was motivated by a degree of personal animosity towards Mr Isaac. I likewise held that that personal animosity was of no real legal significance. Neither do I consider it makes a difference that Mr Isaac had a measure of success on the valuation question. For one thing, given my findings on unfair prejudice, the point was moot. For another, I think it wrong to describe Mr Isaac as the winner on the valuation question given that his own valuation figure was in the region of £2,900,000 or £1,600,000 after application of a minority discount. In other words, the valuation finally arrived at was much lower than that contended for by Mr Isaac, and in terms of the relative levels of success of the parties was rather closer to the nil valuation figure put forward by the Respondents than to Mr Isaac's claimed value.
13. It frequently happens in hard-fought litigation that one party, even if unsuccessful overall, nonetheless succeeds on one or more issues in the overall mix, but that does not mean that one should depart from the usual approach of seeking to assess who is

the overall victor. It is a question of fact and degree in each case and in this case, for the reasons I have given, I consider that the Respondents were successful overall on the issues tried before me. I therefore conclude that they should be entitled to an order for their costs to be subject to detailed assessment if not agreed.

#### Payment on Account

14. Moving on, the question of interim payment on account is of course a different one. As to this CPR 44.2(8) provides:

“Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.”

15. As I have explained, the Respondents in this case say it is possible to identify what is a reasonable amount by reference to the costs identified in the budgeting process, i.e. 70% of the costs actually incurred up to June 2020 and 90% of the budgeted costs thereafter.
16. Mr Rudall, however, says that the figures relied on by the Respondents provide an unreliable benchmark for assessing a reasonable sum on account of the costs awarded. That is because the costs in question are the costs of the issues resolved at the trial and those are narrower than the issues which were in play during the costs budgeting phase in June 2020. That follows because in April 2021, the defence was amended in a manner designed to limit the issues and, in the end, the only live issues at trial were the two which I resolved. Thus, if one were to use the figures from the costs budgeting phase as the benchmark, one would be using figures put together to address a very different size and shape of case than the one on which the Respondents have in fact been successful.
17. In response, Ms Betts argues that although the scope of the trial was eventually narrowed, that was no thanks to Mr Isaac, who despite the concessions made in the defence in April 2021 continued to press for resolution of a broader set of issues. She also made the point that neither side had applied to vary their costs budgets as they could have done, including so as to revise the figures downwards. She also suggested it might be useful as a kind of thought experiment to imagine what application for an interim payment would have been made in circumstances in which there was no costs budget. Here, according to the Respondents’ solicitor’s evidence, the costs incurred are very large and something in the region of £900,000.
18. Standing back, I think these arguments come down to the question whether there is good reason not to make an interim payment on account. Unless there is good reason not to, then CPR 44.2(8) requires an Interim Order or interim payment to be made.
19. In my opinion, and having reflected on the submissions made by the parties, the reasons advanced by Mr Rudall do not amount to a good reason not to make any order at all for an interim payment. It seems to me that what Mr Rudall is really saying is that arguably the figures relied on at the costs budgeting stage may not in this case provide the reliable benchmark for assessing likely recoverable costs which they normally would, because the shape of the case changed and became narrower after the budgeting exercise was completed. Thus, one cannot safely assume (as one otherwise would) that

the budgeted figure represents a highly reliable estimate of the likely recovery on detailed assessment.

20. I see there is force in that point but it seems to me the proper answer to it is not to refuse to make any order at all but instead to exercise a greater degree of caution than one otherwise might in benchmarking the amount of the interim payment against the amount in the budget. To put it another way, there is greater uncertainty in this case than in the usual run of cases and so it is appropriate to be particularly conservative in making deductions from the figures claimed.
21. In the circumstances, what I propose is to order a payment on account corresponding to 50%, not 70%, of the costs incurred prior to the budgeting phase and 60%, not 90%, of the amount in the budget approved in June 2020. In each case, as in the Respondents' original calculation, there should be added an allowance of 3% for the costs of costs management itself. I consider that this approach accommodates sufficiently the argument made by Mr Rudall and those made by Ms Betts which I have referred to. In particular it acknowledges the fact that despite the continuing uncertainty about the scope of the live issues in the case, the budgeted figures must be assumed to have had ongoing significance to the parties since no one applied to vary them. I do not think it helpful in the circumstances to speculate on what form of interim payment might have been appropriate had there been no costs budgeting in this case for the simple reason that there was costs budgeting.
22. I will ask Counsel to assist with carrying out the necessary calculation, which I am sure can be agreed so that the final figures can be included in my order.

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This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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