

Ventures Food Limited v
Little Dessert Shop Ltd
[2022] EWHC 2437

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In this case HHJ Richard Williams (sitting as a High Court Judge) held that significant litigation misconduct by third parties (who had been controlling the litigation conduct of a named party to proceedings) was sufficient to make an order for non-party costs against them.

The availability of such a remedy may afford other litigants an opportunity to obtain an order for costs directly against third parties who have mis-controlled litigation in which a company is the named party to proceedings.

The litigation background

Little Dessert Shop Ltd, together with a sister company, were in the business of franchising Little Dessert Shops. One such franchisee was Ventures Food Limited (“Ventures”), who ran a franchise in Lichfield. In September 2020, the franchise agreement was terminated. The underlying litigation between the Little Dessert Shop and Ventures concerned the terms on which Ventures occupied the premises from which it had been trading as franchisee.

Ventures’ case was that the lease of the premises was held on trust for it by Little Dessert Shop Limited. Ventures claimed to have an email that proved this to be the case. Accordingly, Ventures sought a declaration from the Court in appropriate terms.

Little Dessert Shop’s case was that the email relied on by Ventures was not genuine and had been manipulated. Little Dessert Shop relied upon its own version of the email and argued that Ventures occupied the premises pursuant to a contractual licence which was now terminated.

Ventures pleaded by way of Reply that Little Dessert Shop had altered the email and done so dishonestly.

The litigation came to trial in March 2022. HHJ Williams found that Little Dessert Shop’s version of the email was genuine, that the email produced by Ventures had been manipulated and that Ventures occupied as licensee. Accordingly, Little Dessert Shop won the underlying litigation and obtained possession of the premises.

The application for a non-party costs order

An application was then made for non-party costs against the brothers whom, the Judge had found at trial, were the co-owners of Ventures (they had repeatedly referred to Ventures being a corporate vehicle through which they operated their joint venture), although only one was a (sole) director of Ventures.

Importantly, the non-director Third Party had substantial day to day control over Ventures and had day to day conduct of the litigation for Ventures. The Judge considered two bases for the application

First, he considered whether evidence that (it was submitted) showed manipulation of the email by the Third Parties was a sufficient basis to make a non-party costs order. He declined to make an order on this basis because the allegation that it was the Third Parties who had manipulated the email had not been specifically pleaded by Little Dessert Shop.

Second, he went on to consider the question of litigation misconduct.

Ventures had (it was submitted):

- Failed to give instructions to their expert to complete a joint statement, with the result that, at the PTR, Ventures' permission to rely upon expert evidence was rescinded.
- Failed to attend the PTR.
- Failed to notify Little Dessert Shop whether they intended to challenge its expert evidence at trial.
- Failed to attend the trial.

HHJ Williams (sitting as a High Court Judge) held that the Third Parties had:

“by their own admissions controlled the litigation on behalf of [Ventures]. Having chosen to initiate the proceedings, the Third Parties then chose, without formally discontinuing, to disengage at a critical stage of the proceedings as the trial date fast approached. Such conduct was wholly contrary to the overriding objective and no doubt directly caused [Little Dessert Shop] needlessly to spend significant time and money in preparing for and attending both the PTR and the trial of a case that the Third Parties initiated but no longer had any intention of contesting. Indeed, the court allocated 4 days in total to the trial, most of which time was not needed and ultimately lost as a result of the Third Parties' decision not to participate.”

And accordingly:

“Whilst particular caution should be exercised before making a director/owner of a company liable for costs in relation to the activities of the company, the Third Parties were guilty of serious litigation misconduct in the exercise of their control of the litigation, which was exceptional and well outside the ordinary run of cases, such that they should not be able to avoid personal liability for their actions/omissions by seeking to hide behind the corporate identity of [Ventures].”

HHJ Williams therefore ordered that the Third Parties pay Little Dessert Shop’s costs of the litigation from the date that Ventures disengaged in the litigation up to and including trial.

Conclusion

The facts of this case are unusual. However, they show that in an appropriate case, the Court may make a Third Party costs order on the grounds of litigation misconduct. Third parties who cause corporate entities that they own or control to engage in reprehensible litigation conduct may well find that they cannot use the corporate vehicle as a shield against their liability to meet costs.

Nicholas Pilsbury and Justin Meiland, instructed by HMA Law, acted for the successful Defendant.

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Hailsham Chambers

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Disclaimer: this article is not to be relied on as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.