



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1401/5/7/21

BETWEEN:

FORREST FRESH FOODS LIMITED

Claimant

- v -

COCA COLA EUROPEAN PARTNERS GREAT BRITAIN LIMITED

Defendant

ORDER

UPON the Tribunal delivering its judgment on 7 September 2021 ([2021] CAT 29) granting the Defendant's application for ancillary orders and striking out the Claimant's claim in its entirety ("the Judgment")

AND UPON reading the written submissions of the Defendant filed on 14 September 2021 seeking an award of its costs on the indemnity basis and for an interim payment of 50% of its costs on account and the letter dated 5 October 2021 from the solicitors for the Defendant regarding its updated costs figures

AND UPON reading the written submissions on costs filed by the Claimant on 14 September 2021 and further submissions from the Claimant filed on 21 September 2021 agreeing that costs be subject to detailed assessment

IT IS ORDERED THAT:

1. The Defendant shall be awarded its costs in this action on the indemnity basis, to be subject to detailed assessment if not agreed.
2. Within 28 days of this Order, the Claimant shall pay to the Defendant an interim payment in the sum of £129,534.79, representing 50% of the Defendant's overall claim for costs to be assessed.

REASONS

1. As the wholly successful party to its application for ancillary orders, the Defendant is in principle entitled to its costs occasioned by the Claimant's claim.
2. The Tribunal considers that the Claimant's conduct of this action takes the case "out of the normal" in a way which justifies an order for indemnity costs (*Socrates Training Limited v The Law Society of England and Wales* [2017] CAT 12 at [8]). The Claimant's allegations in these proceedings, rehearsed in the pre-action correspondence, were very serious but consistently vague and unspecific. The Defendant quite properly – and repeatedly – asked for further particulars, but was met with a steadfast refusal on the part of the Claimant both in pre-action correspondence and following service of the Particulars of Claim.
3. Even following the Defendant's application for strike out/summary judgment no further particulars were provided. While counsel for the Claimant acknowledged at the hearing that further particulars would need to be provided, no draft amended Particulars of Claim were provided, nor was counsel even able to articulate orally what further particulars might be provided. As a result the basis for the Claimant's allegations remained, following the hearing, unintelligible, both as a matter of fact and law. Nor was there any coherent explanation of the loss said to have been suffered by the Claimant as a result of the Defendant's conduct.
4. The Claimant thus put the Defendant to the expense of addressing an incoherent and unintelligible claim, the factual and legal basis of which the Claimant, even at the hearing, made no serious attempt to explain. That is, as noted in the Judgment, a deeply unsatisfactory approach to litigation of this nature and amply justifies an order for indemnity costs.
5. An interim payment by the Claimant to the Defendant of a sum representing 50% of the Defendant's overall claim for costs is appropriate, since it is highly unlikely that the Defendant's costs, following detailed assessment, would be taxed down by more than that percentage.

The Hon Mrs Justice Bacon
Chairwoman of the Competition Appeal Tribunal

Made: 7 October 2021
Drawn: 7 October 2021