

Dispute Resolution
Case Law Update
Rosling King LLP



Background to the Claim

The Claimant, Findcharm Ltd (“Findcharm”) operated a restaurant within the Churchill Hotel owned by the Defendant, Churchill Group Ltd (“Churchill”). In November 2014, a gas explosion at the hotel caused the restaurant to close for around four months. Findcharm’s claim was for £820,000 plus interest, the main element of the claim was for business interruption/loss of profit.

Findcharm set out their claim in detail and fully considered all the issues in the case. In contrast, Churchill’s Defence was basic with a combination of bare denials and non-admissions. A Case Management Conference was listed and cost budgets were prepared by both parties.

Costs

After revising their budget downwards, Findcharm’s cost budget came to £244,676.30. In contrast, Churchill estimated through its Precedent R (which requires parties to comment on the other side’s costs) that Findcharm’s costs should be less than £90,000.

The Decision

Mr Justice Coulson disregarded Churchill’s Precedent R, finding that it was completely unrealistic and designed to put as low a figure as possible on every stage of the process, without justification, in the hope that the Court’s subsequent assessment would also be low. He added that the estimate was an “abuse of the cost budgeting process”.

Coulson J provided some examples evidencing the lack of reality in Churchill’s Precedent R. One example was in relation to witness statements where Findcharm estimated a total cost of £40,235. The Court considered this figure to be realistic considering the work involved included preparation of three witness statements and the consideration of Churchill’s two witness statements. However, Churchill offered just £5,300 for this work. Coulson J stated that this was “simply incredible in a case where, not only do the background and circumstances of the explosion need to be explained, but also where a large claim for loss of profits will need to be underpinned by detailed factual evidence”.

In respect of expert reports Findcharm estimated a cost of £28,648. The Court found that this was not excessive given the particularly high fees charged by forensic accounts. However, Churchill sought to allow just £16,000 for this stage. Coulson J stated that, in his experience, this figure was way out of step with what an expert accountant would normally charge for this type of work.

The Court also held that Churchill’s proposal to allow just £10,000 for trial preparation was unjustifiable, whereas Findcharm’s figure of £69,765 was not unreasonable given the potential complexity of the claim.

May 2017
Page 3

As a result the Court disregarded Churchill's Precedent R and concluded that Findcharm's revised cost budget was both proportionate and reasonable and allowed Findcharm a budget of £244,676.30.

Commentary

The decision is a welcome one for claimants who are confronted at the CMC by defendants who submitted artificially low cost budgets and Precedents Rs, in order to gain a tactical advantage. It should also serve as a warning to all parties that the Courts take cost budgeting seriously and will not tolerate those who treat cost budgeting as a form of game.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.