

## Costs Award is Not Guaranteed

Re Robin Hood Centre plc (No 2) [2015] EWHC 2289 (Ch)

This case involved an action for wrongful trading successfully brought by the company's liquidators against its two directors. Judgment was handed down at the end of the Trinity term on 31 July but the issue of costs was reserved due to a lack of time. On 6 October 2015, Registrar Jones ordered that, notwithstanding that the liquidators had been successful in the action, there would be 'no order as to costs' - in other words, each side would bear its own costs.

Generally in litigation the rule of thumb is that the losing party will bear the winning party's costs to be assessed by the court if they cannot be agreed. In this case, however, although the claimant liquidators had won damages, they were very substantially less than the amount actually claimed at the outset. Furthermore, the defendants had won on a number of important issues to the extent that the case that the claimants won looked very different to that which they initially brought.

The Registrar found that the intransigent position adopted by the liquidators had meant that at least 60% of the time spent by the parties on the litigation was in relation to issues on which the defendants had succeeded. The registrar was not, however, minded to award the liquidators 40% of their costs as this would not have recognised the fact that the amount of damages awarded to the claimant liquidators was so substantially less than the amount that they had originally claimed. On this basis, the Registrar was minded to stick to the suggestion that he initially made in July that there should be no order as to costs.

*Whilst we all know that costs remain in the discretion of the court, litigators tend to assume that the successful party in any dispute will be awarded costs as a matter of course. This case is a useful reminder that that cannot be guaranteed. Rule 44.3 of the CPR, to which the Registrar expressly referred in his judgment, sets out the criteria which the court must take into account when considering an award of costs and these include proportionality and whether the costs had been reasonably incurred.*

**If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us – [office@amblaw.co.uk](mailto:office@amblaw.co.uk) or 020 3651 5646.**



### AMB Law

46 New Broad Street  
London  
EC2M 1JH

T: +44 (0)20 3651 5646  
F: +44 (0)20 3651 5554  
[office@amblaw.co.uk](mailto:office@amblaw.co.uk)

18 Epsilon House  
West Road  
Ipswich  
IP3 9FJ

T: +44 (0)1473 276103

### Alistair Bacon Principal

T : 020 3651 5647  
M: 07881 554062  
E: [abacon@amblaw.co.uk](mailto:abacon@amblaw.co.uk)

### Sutha Mohanadas Trainee Solicitor

T : 020 3651 5704  
[smohanadas@amblaw.co.uk](mailto:smohanadas@amblaw.co.uk)

### Stephen Carter Consultant

T : 020 7329 4242  
[scarter@amblaw.co.uk](mailto:scarter@amblaw.co.uk)

The contents of this *Bulletin* are believed to be correct as at the date of publication. This information is provided for information only and is not intended to constitute legal advice. No liability can be accepted by AMB Law for any errors contained herein.