Neutral Citation Number: [2020] EWHC 734 (Ch)

Case No: CR-2018-011010

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS ENGLAND & WALES
INSOLVENCY AND COMPANIES LIST

Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 22/03/2020

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

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Between:

NIMAT HALAL FOOD LIMITED **NIMAT HALAL MEAT LIMITED**	**Applicants**
- and -	
(1) NIMISH PATEL **(in his capacity as administrator of Tariq Halal Meat (Ilford) Ltd)** **(2) TARIQ SHEIKH**	**Respondents**

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ZOE O'SULLIVAN QC (instructed by **ADL LEGAL**) for the **Applicants**
THOMAS ROBINSON (instructed by **PINSENT MASONS LLP**) for the **First Respondent**

Hearing date: 4 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

Chief ICC Judge Briggs:

1. This matter has taken an unusual turn. It started as a petition made pursuant to section 994 of the Companies Act 2006 and concerned the same business, Tariq Halal Meat (Ilford) Ltd (the "Company") and most of the same personalities. On 25 June 2018 and prior to judgment being handed down on 3 July 2018 by ICC Judge Jones, the Company entered administration upon a paragraph 22 of schedule B1 to the Insolvency Act 1986 application. Mr Patel was appointed administrator. Mr Patel set about investigating claims against the Company. On 30 November 2018 he rejected two proofs of debt submitted by the Applicants.

2. By an application dated 20 December 2018 the Applicants appealed the decisions of Mr Patel pursuant to Rule 14.8(1) of the Insolvency Rules 2016. In short the first decision was to reject a proof of debt submitted by the second applicant Nimat Halal Meat Limited (Meat) in the sum of £140,696.34 in respect of the supply of meat and management fees. The sum breaks down so that the supply of meat is for a sum of £90,296.34 and the management fee claim £50,400. The second decision appealed was the rejection of a sum of £250,000 submitted by Meat and Nimat Halal Food Limited (Food) claimed in respect of estimated loss of profits.

3. On the second day of the hearing listed on 21 and 22 January 2020 the Applicants discontinued their appeal against the rejection for loss of profits. An agreement was reached between Mr Patel and the Applicants that new proofs of debt in relation to the supply of meat would be submitted and the court was asked to rule on the issue of management fees. In order to put their house in order the Applicants were required to resubmit their accounts and provide the Administrator with a proof of debt that matched the accounts for each of the Applicants. The second Respondent contested the proofs of debts but his position at the hearing and during the proceedings was both confused and unhelpful. He first claimed to support Mr Patel in rejecting the proofs of debt but added nothing to Mr Patel's analysis. When Mr Patel agreed to reconsider freshly submitted proofs he wished to continue to contest. The matter was adjourned until 4 March 2020 for the purpose of submission of new proofs, a decision on the management fees and consequential matters.

4. On 4 March 2020 I gave an oral judgment finding on the balance of probabilities that the management services claim by Meat and Food pursuant to an agreement was properly due and they were entitled to claim for the management fees claimed. Costs were awarded against the Second Respondent who was refused permission to appeal. The remainder of the hearing was occupied with argument concerning costs. It is the Applicants' case that Mr Patel should pay the costs of the application personally and not be able to recover any costs from the insolvent estate. It is Mr Patel's position that the insolvent estate should have the costs of the discontinued application and no order as to costs should be made between Mr Patel and the Applicants in relation to the first proof of debt appeal. It was conceded that the overall costs should be reduced by a proportion owing to the discontinued element of the claim. Due to shortness of time judgment on the remainder of the costs issue was reserved. This judgment deals with who should bear the costs, and if Mr Patel is to bear the costs whether he should be able to be indemnified from the insolvent estate or pay them personally.

The Insolvency rules

5. Rule 12.47 of the Insolvency Rules 2016 ("2016 Rules"), which is entitled "Awards of costs against an office holder, the adjudicator or the official receiver" provides:

> "Without prejudice to any provision of the Act or Rules by virtue of which the official receiver or the adjudicator is not in any event to be liable for costs and expenses, where an office-holder….is made party to any proceedings on the application of another party to the proceedings, the office-holder…is not to be personally liable for the costs unless the court otherwise directs."

6. Rule 14.9 (2) of the 2016 Rules expressly deals with challenges (or appeals) to proof of debt decisions made by an officeholder:

> "An officeholder other than the official receiver is not personally liable for costs incurred by any person in respect of an application under rule 14.8 unless the court orders otherwise".

7. The starting point is that Mr Patel is not personally liable. The issue is whether the court should order otherwise. The Applicants submit that the test for making a different order has a low threshold. At one point during submissions it was contended that a mistake or blunder was sufficient to "order otherwise". Support was garnered from *Re Silver Valley Mines* (1882) L.R. 21 Ch D 381 which concerned the Rules of Court 1875. The liquidator had made two unsustainable applications to court that were dismissed as misconceived. In dismissing the applications, the court refused to give the liquidator his costs out of the estate the effect of which was to make the liquidator personally liable. It was submitted that as the liquidator is a trustee for the contributories and creditors he is entitled to costs out of the estate unless he had been guilty of misconduct. The Master of the Rolls said that he understood the term "blunder" was stronger than a "mistake" and:

> "The Judge was of the opinion, and I am not disposed to disagree with him, that the application made on the part of the liquidator was a blunder, he puts it in fact rather more strongly, for he says that in his opinion it was altogether improper and wrong."

8. He added that it "is no doubt settled that it requires a very strong case to deprive an ordinary gratuitous trustee of his costs" making a distinction between an official liquidator and gratuitous liquidator. Brett LJ and Cotton LJ thought that it would not be unreasonable for the liquidator to seek permission to appeal and obtain his costs for doing so unless the appeal is frivolous. In *Capital Films Limited* [2010] EWHC 3223 Mr Richard Snowden QC (as he was) held the view that it would be "unjust" to permit recoupment from an insolvent estate, citing *Silver Valley Mines*, if there has been a "serious mistake". He found that the approach of the administrators to an application made pursuant to paragraph 71 of Schedule B1 to the Insolvency Act 1986 had been "irrational and misconceived". The Judge clearly articulated the reasons for reaching his decision [87] which included (i) the interests of the secured creditors were to be affected by an application to court; (ii) there was a failure to engage with the secured creditors prior to launching the application; (iii) concerns raised by the secured creditors were brushed aside without more; (iv) there was a complete failure to investigate the effect of an assignment notwithstanding they had told creditors that they would and (v) the administrators pressed on seeking an expedited hearing in the teeth of sustained opposition.

9. *Coyne v DRC Distribution Limited* [2008] EWCA Civ 488 is cited in *Capital Films Limited*. In *Coyne* an application was made by a substantial creditor to remove the joint administrators. At the first hearing the matter was adjourned and then it no longer became necessary to press for removal. The costs of the application remained in issue. His Honour Judge Purle QC imposed a personal costs liability order on the joint administrators and ruled that they should have no right of indemnity. The Court of Appeal upheld the decision agreeing with the Judge who found:

> "…the application that was before me and in respect of which I have to decide the costs issues, was properly founded and would have succeeded. That is on paragraph 1 alone. So far as the other paragraphs are concerned, I would have removed the administrators had I needed to act under paragraph 88 on the basis that the purpose of administration was unlikely to be achieved, and on the basis that the administrators did, in my judgment, fail to take the steps they should have taken and which they themselves threatened they would take before offering the company for sale. They did not act expeditiously and with the robustness of purpose that one would have hoped for and which one is entitled to expect. Moreover, they must, had they thought about it properly, have concluded that the administration purpose was unlikely to be achieved so long as past transactions remained unscrambled. The decision was taken on 23 August not to seek interlocutory relief. Yet the next day they sought offers while making no attempt to unscramble past transactions..."

10. The Court of Appeal did not regard any of the criticisms levelled at the Judge "as undermining the integrity of his decision".

11. Reliance was also placed on a more recent case, *Promontoria (Chestnut) Ltd v Craig* [2017] EWHC 2405 (Ch) where His Honour Judge Hodge QC ordered "otherwise" on the basis that the administrators had acted unreasonably. The judgment provided to the court is headed "Draft" but it carries the neutral citation number above. The Judge explains that the main relief sought was a "declaration that the joint administrators unreasonably and/or improperly exercised their discretion under paragraph 41(2) of Schedule B1 to the Insolvency Act 1986 in requesting Sarah Helen Bell and Matthew Ingram to vacate office as receivers appointed over and in respect of over 30 properties…". The Judge could see "no reason why" the administrators should prevent secured creditors realising their property and that by taking the action they did, requiring the receivers to vacate office, was an "unreasonable and peremptory decision". The Judge did not cite any authority but found that there was "good reason" to make an order that was "otherwise".

12. In *Burden Group Ltd*; sub nom. *Fielding and another v Hunt* [2017] EWHC 406 the court dealt with costs of an appeal against the rejection of a proof of debt. His Honour Judge Stephen Davies had little hesitation in opining that if an office holder is found to act for his personal advantage, he is likely to be ordered to pay the costs of unsuccessfully resisting an appeal. Referring to *Re Mordant (a Bankrupt)* [1995] 2 BCLC 647 the Judge said that "the court should not direct otherwise save in a "special case" where there was a "good reason" to do so." Simply resisting an appeal should not lead to personal liability. The usual order for costs of a successful appeal against an office-holder's decision rejecting a proof is that the successful party is entitled to costs, and those costs are to be borne by the insolvent company.

13. It is apparent that the court has not spoken with one voice when it comes to nomenclature, but it has enunciated a principled approach. In my judgment the starting point is the Rule 14.9(2). An order should not ordinarily be made against an office holder personally. Something more is required. Something more relates to the conduct of the office holder. The degree of conduct deserving of a personal costs order will depend on the circumstances of each case. A mere mistake is unlikely to be sufficient. Acting in a neutral manner, on an appeal from a rejection of proof, is unlikely to be sufficient. Acting for a personal advantage in resisting an appeal is very likely to lead to a personal costs order. Such conduct would present a "special case" and a "good reason", and may be characterised as "irrational conduct", or "unreasonable conduct".

14. Where the conduct complained of relates to a decision made on a proof of debt, the court will take account of the duties imposed upon an office holder to investigate the proof. It has long been the law that an office holder is under a duty to examine every proof and consider the validity of the debt which is sought to be proved: *Re Home and Colonial Insurance Co* [1930] 1 Ch 102. He should require satisfactory evidence that the debt on which the proof is founded is a real debt: *Re Fraser, ex parte Central Bank of London* [1892] 2 QB 633, CA. And the obligation is not negated even where the proof is based on a judgment: *Re Van Laun, ex p Chatterton* [1907] 2 KB 23, CA.

Rejection of proof of debt

15. By a rejection letter headed "Notice of Rejection of Proof of Debt" dated 30 November 2018 (the "Notice of Rejection") Mr Patel rejected the claim for the supply of meat to the Company. The first ground was that Mr Patel understood that there had been a settlement for any sums owing between the Applicants and Mr Aamir Ijaz. The Notice of Rejection explained:

> "I have been informed by Mr Ijaz that he negotiated the settlement with Mr Tariq Masood, a director of Nimat Halal Meat Limited ("NHM") and Nimat Halal Food Limited ("NHF"). Mr Ijaz was authorised by Mr Tariq Shiekh (the director of the Company) to enter into the settlement on the Company's behalf. Under the terms of the settlement, Mr Ijaz paid the sum of £69,500 to NHM and NHF in full and final settlement of all of the Company's obligations and liabilities to NHM and NHF and all of NHM and NHF's obligations and liabilities to the Company. At Mr Masood's direction this amount was paid to Mr Rana Arslan Ahmed in four instalments: £10,000 from Mr Ijaz personally on 12 July 2017; £10,000 from Mr Ijaz personally on or around August 2017; £35,000 from Gannons Commercial Law Limited (Mr Ijaz's solicitors) on 5 September 2017…; and £14,500 from Gannons Law Limited on 25 September 2017…"

16. In his witness statement Mr Patel states that he "did not take the decision to reject their claims lightly" and that he had carried out "significant investigations". He had interviewed Mr Ijaz, Mr Sheikh, Mr Qaiser Rashid and Mr Khawar Rashid; he had communicated with Mr Masood, the director of the Applicants; asked Mr Masood for information to support his claims; reviewed the Company's books and records; and asked Mr Masood to provide documentary evidence including the Applicants' statutory accounts to demonstrate consistency with claims. Mr Patel also gave evidence that he invited Mr Masood to interview before rejecting the proof of debt. If

Mr Masood had attended interview, he would have had an opportunity to deal with the settlement issue and the other grounds of rejection. Mr Masood was not able to attend interview until after the time ordered by the Court to investigate the proofs (the time limit was imposed by Judge Prentis at a directions hearing on 12 October 2018). In his evidence Mr Masood explained that the payments made by Mr Ijaz were not in settlement of any liability but a gift from Mr Ijaz described as a "goodwill gesture" because he felt guilty about a windfall he had received. The explanation was not entirely satisfactory and there is no documentation to record the transactions. The Company's books and records are inadequate, something for which Mr Masood must in part take responsibility as, as I have found, the Applicants provided management services. Although the evidence was not entirely satisfactory as Mr Sheikh failed to provide evidence to the contrary and Mr Ijaz did not attend court it was recognised by Mr Patel that it was likely that the court would find his version of events made out on the balance of probabilities.

17. The second ground for rejection relates to the Company's failure to keep proper books and records:

"Without prejudice to the above, the amounts being claimed by NHM do not accord with its statutory accounts (or the statutory accounts of NHF) as filed at Companies House. It therefore appears that the Company was never indebted to NHM and/or NHF (as the case may be) in the sums claimed or at all."

18. Reference to "and/or NHF" is a reference to the proof of debt being submitted for either NHM or NHF. The Notice of Rejection explained that "NHM and NHF have declined to provide an explanation as to why the statutory accounts contradict the statements. They have declined to provide their full accounts so… that the differences can be reconciled."

19. Mr Masood's explanation for the failure to provide Mr Patel with the accounts was poor. He explained, defensively, that the accounts were an internal matter, and if there was a problem the accounts will be rectified. He was forced to accept that the accounts did not reflect his proof of debt claims and during the adjournment in January sought to rectify the accounts. Mr Masood has failed to provide any satisfactory explanation as to why the accounts did not reflect the claimed creditor position of the Applicants. This is striking since he purported to have the necessary expertise to manage the Company.

20. The third ground for rejection is a failure by the Applicants to provide order forms in accordance with the supply agreement made between the Applicants and the Company. It is apparent that Mr Patel had asked Mr Ijaz about the order forms from the Notice of Rejection. He is stated to have been the director of the Company during the period when the halal meat was supplied.

21. Having relied on the order forms to support the claims made by the Applicants when asked for evidence by Mr Patel, the challenge to his decision saw a noticeable change of tack. Mr Masood's evidence in his witness statement was that he had received text message for orders and responded accordingly. In oral evidence he was less sure about the sanctity of the order forms. He was asked about texts. He said that he used Whatsapp but had no record of any messages. His evidence patently held up in cross

examination where he provided detailed evidence of his Whatsapp procedure, but it must be recognised this evidence had not previously been provided. Cross-examination came from Mr Webb, counsel for Mr Sheikh, was unable to undermine the evidence. This was new evidence. Mr Patel, acting objectively, recognised that as the director of the Company was not present in court to counter Mr Masood's version of events, it was likely that it would be found, on the balance of probabilities, that the version of events given in the witness box by Mr Masood after cross-examination and without any contradiction in the form of documentary evidence, would be found to be true.

22. Lastly in respect of supplies by both Applicants, Mr Patel questioned the position. The answer from Mr Masood was that there had been an assignment. The Notice of Rejection states "Mr Masood claims that the relevant sums were assigned from NHF to NHM. No documentary evidence has been supplied to support any assignment of the debt from NHF to NHM, A request for a copy of the assignment agreement has not been complied with." Mr Masood's written evidence was that the assignment of the debt had been accepted but he did not state that the assignment was not in writing. He failed to explain to Mr Patel that there was no written assignment until the hearing.

23. An agreement dated 1 February 2016 (the "Agreement") was relied upon by Mr Masood to support the proof of debt submitted for management services provided to the Company by the Applicants in the sum of £50,400. Mr Patel has some serious concerns about the Agreement. The concerns arose as the director of the Company, Mr Ijaz, was said to have "challenged the veracity" of the Agreement. He could not recall signing the Agreement and asserted that neither Applicant managed the Company in accordance with the terms of the Agreement. Other concerns were also expressed which all dealt with the form of the Agreement. The Notice of Rejection stated "I am not satisfied that the Business Management Agreement is a genuine document. I am continuing to investigate the matter". Mr Patel was caustically cross examined on these two sentences, but it should be noted that the application challenging the rejection of the proofs was made soon after the Notice of Rejection was sent.

24. Mr Masood's written evidence is that he had already provided Mr Patel with a "detailed list of the management services carried out". This is perhaps indicative of the evidence provided by Mr Masood, it did not reflect the whole truth. In fact, the "detailed list" was vague. The first list provided was so vague that Mr Patel was forced to ask again. The second attempt at providing Mr Patel with information did not greatly improve on the first. The fact that Mr Patel patiently asked for further information is not typical of an office holder acting unreasonably, motivated by self-interest or acting irrationally.

25. In his evidence Mr Masood relied on the absence of evidence produced by Mr Ijaz. As an officer of the Company at the relevant time, a person who was interviewed by Mr Patel, and co-signatory to the Agreement it was a surprise not to hear Mr Ijaz's version of events. It was not a surprise that Mr Patel did not call Mr Ijaz. Mr Patel informed the court that he was not taking sides in the dispute, he had ruled on the proof of debts and took a neutral stance on the challenge. He had no interest in the outcome. On the other hand, Mr Masood had an interest in the outcome as did Mr Sheikh. In his second witness statement Mr Masood explains that he had met with Mr

Ijaz. I infer from his evidence that Mr Ijaz had agreed not to give evidence against the Applicants. This is likely to be the reason why Mr Masood did not call him as a witness. The inference is drawn from the evidence in Mr Masood's second witness statement. First it is said by Mr Masood that he had agreed he would not bring a claim on his personal guarantee against Mr Ijaz. Secondly it is said that Mr Ijaz informed Mr Masood that he would assist him. There appears to have been an exchange. This enabled Mr Masood, in his second statement, to state [10] "I have advanced the reasons why the proofs of debt had been wrongly rejected and set out the evidence in support of those claims. I do not therefore wish to add anything further on these matters…". The evidence he did advance changed during the course of live evidence in certain material respects, which I shall deal with later.

26. Incredibly, and perhaps in the knowledge that Mr Ijaz would not be tested in court, Mr Masood goes on to state [34] "…following a meeting with Mr Ijaz…I was content not to include him as a party to the proceedings (or to bring a claim under his personal guarantee given in the management agreement) particularly as he indicated that he would be willing to assist in providing his "truthful evidence" and did not need to be compelled by any court order".

27. He continues: "Mr Ijaz told me that Mr Sheikh had informed him that Mr Patel was '*on his payroll'* and that Mr Patel's *'job'* was not to accept our claim". These represent serious and direct attacks on Mr Patel but are purportedly said by Mr Ijaz and relied upon by Mr Masood. If these reported attacks, serious in nature, had any substance Mr Masood is likely to have called Mr Ijaz as a witness. I infer, in the absence of any reason otherwise, that he had not called Mr Ijaz to support the allegations because they are gratuitous, unwarranted and designed to simply discredit Mr Patel. I reject them as uncorroborated and find that the raising of such unsupported allegations is to be characterised as unreasonable conduct to a high degree.

Argument in support of a personal liability order

28. In his first witness statement Mr Masood states that there had been a degree of unfairness by rejecting his proof of debt, the decision to reject was unjustified and that Mr Patel "approached the Applicant's claims in a hostile manner and has acted unreasonably in accepting seemingly without question evidence provided by on behalf of the Company, whilst rejecting credible and supported evidence provided by the Applicants".

29. In submissions Miss O'Sullivan argues that the conduct complained of by the Applicants is that Mr Patel neglected his duty to act as an impartial arbiter and pursued an aggressive and sometimes improper attack on the proofs of debt submitted by the Applicants.

30. In her skeleton argument Miss O'Sullivan provides ten reasons why the court should make a personal costs order. They are as follows:

(1) reached conclusions that documents were forged without any proper evidence, expert or otherwise;

(2) actively came up with theories designed to suggest that the proofs of debt were not genuine, and put leading questions to interviewees to get them to support his own self-generated theories;

(3) pursued a false theory that the meat had been supplied by a third party, despite there being no evidence to that effect;

(4) perversely rejected the whole meat supply claim on the basis that he could not be certain which sum was owed to which Applicant;

(5) unreasonably refused to treat the copious contemporaneous evidence of supply by the Applicants in the form of invoices/delivery notes and statements of account as establishing their claims;

(6) sought to suggest that the entirety of the delivery notes were not genuine on the basis that Mr Ijaz had said he did not recognise the signature on some of them (which the Administrator was unable to identify), but in doing so mischaracterised the evidence of what Mr Ijaz had actually said, and failed to follow up with the actual manager of the shop, Mr Ijaz's brother;

(7) unreasonably accepted the evidence of Mr Ijaz that there was a settlement with Mr Masood in 2017, without testing that evidence against any of the contemporaneous documents, in particular the settlement deed of 12 July 2017 between Mr Ijaz and Mr Sheikh which made no reference to any such settlement;

(8) unreasonably accepted the evidence of Mr Ijaz on the settlement point despite failing to seek (as he admitted) any evidence that he had the Company's authority to reach a settlement;

(9) unfairly (as he admitted under cross-examination) relied on selected correspondence to suggest that the Applicants had not sought payment of their management fee invoices and thus the claim was not genuine, while ignoring several written demands for payment of those invoices;

(10) unreasonably argued that no management services at all had been provided by the Applicants, a view which he accepted in cross-examination was unsupported by evidence.

31. At first blush the sheer volume of criticism appears formidable but closer analysis is required.

Analysis

32. By enumerating the criticisms there is a risk that the overall picture is lost. Mr Patel did not state in the Notice of Rejection that each reason for denying the proof was of equal weight. He relied on a number of reasons that, when taken together, led him to conclude that the proofs should be rejected. Looked at in the round, Mr Patel did not reject the proof of debt for management services on the basis of a forgery nor did he pursue any theory without evidence or actively seek theories against Mr Masood. A distorted version of the evidence is required to reach those conclusions. I reject the submission that Mr Patel invented or actively invented reasons to reject the proofs.

Miss O'Sullivan put these allegations to Mr Patel in the witness box which he categorically denied. I accept Mr Patel's evidence.

33. The information provided by the Applicants to Mr Patel was not (for a number of reasons) satisfactory and there was reason to think that the Agreement was not genuine or not in the final form. Those reasons included Mr Ijaz's position (as a director of the Company and co-signatory to the Agreement), that neither of the Applicants managed the operations of the Company or ran its business affairs. Mr Masood did not deny that the form of the Agreement had a number of discrepancies that required an explanation and Mr Masood failed, in my judgment, to provide evidence in a timely manner. There was nothing irrational about Mr Patel's conclusion. He was entitled to reach it on the material he had.

34. I find that there was nothing perverse about rejecting the meat supply claim. Mr Masood did not help himself when submitting the claim or responding to questions validly asked by Mr Patel. He claimed that there was an assignment between the Applicants but failed to produce the assignment only later to rely on his evidence in court, to prove that there was an oral assignment. This in itself was contradicted because during the adjournment the Applicants produced two proofs of debt: one for each Applicant. In his skeleton argument Mr Robinson for Mr Patel explains what transpired:

"On 17 February 2020 the Applicants' solicitors produced spreadsheets to accompany the proofs of 12 February 2020, showing delivery dates, amounts and delivery numbers for the meat supplies. It also set out that credit notes had been issued by NHM to the company in the sum of £3832.83 and by NHF in the sum of £3304.47, and listed the payments received from the company, by date and amount. Further, also on 12 February 2020, evidence of £35,000 of these payments was given in the form of extract bank statements.

On 19 February 2020 the Administrator sent two letters adjudicating on the proofs of debt dated 12 February 2020. He admitted the claim of NHF in the sum of £55,820.29 and the claim of NHM in the sum of £34,494.10. He rejected the claim for interest after the date of the administration and rejected the argument that the claims were secured."

35. The reference to security is a reference to Mr Masood claiming that debt management agreement should be read so as to give priority to the claim arguing that it is a debt secured over the assets of the Company. Much of the information provided (new spreadsheets and payment evidence) during the adjournment was not provided prior to the hearing in January nor at the time the proofs were submitted. This demonstrates Mr Masood's failure to provide clear evidence about which company was owed what sum of money for supplies of halal meat, said to have been made. The picture provided by Mr Masood was one of confusion commonly associated with a director/shareholder failing to treat a company as a separate personality.

36. The allegation that Mr Patel acted unfairly or unreasonably fails to take account of the duty imposed on an office holder's position. He was entitled to and should have probed the proof of debt claim.

37. Mr Patel's actions were entirely consistent with an office holder carrying out his duty to investigate and obtain satisfactory evidence. In my judgment Mr Patel was fully justified in rejecting the proof of debts in respect of the supply of meat on the first ground alone. It is for the claimant to demonstrate sufficiently clearly the debt said to be owed by an insolvent company, not for the office holder to second guess. I accept Mr Robinson's submission that "The proof of debt under which NHM claimed £34,494.10 was provided on 12 February 2020. The proof of debt under which NHF advanced its claim for £55,820.29 was provided on the same date. It was, and is, important that NHM and NHF advance their claims as separate legal entities. The insolvency of the Company is a collective process and all creditors need to see what is claimed by creditors individually (and potentially inspect the proofs, and challenge decisions on them). One of the reasons the Administrator gave for rejecting the meat supplies claim by NHM was that the directors of NHM and NHF had not treated each company "as a separate legal entity", so that it was unclear what was actually owed to NHM (if anything)".

38. It is permissible, in my judgment, to look at what transpired to assist in deciding whether the accusations of unreasonableness levelled at Mr Patel are justified. It was not unreasonable to ask a co-signatory about the validity of an agreement. Mr Patel was not present at the Company when events took place. The Company's books and records are in a poor state. Mr Masood and Mr Ijaz were present at the time. Mr Masood, who had to demonstrate satisfactorily and clearly that he had an unpaid debt for proof, was not able to attend an interview with Mr Patel until after the set date for adjudication on the proofs. He failed to provide the documentation now provided and failed to clearly set out his case. Mr Ijaz made clear to Mr Patel that he was suspicious of the claims made by Mr Masood. It was not unreasonable, in my judgment, to ask the sole director about the claims. Such action is consistent with the duty to investigate. Indeed, in his second witness statement Mr Masood relies on things said by Mr Ijaz during a conversation, after stating that he would not seek to make a claim against Mr Ijaz [34].

39. In retrospect Mr Patel may have accepted that some of the debt was due to one of the Applicants for the supply of meat, as he accepted in cross-examination, but that in itself presented difficulties. At the time he probed Mr Masood and others and exercised his judgment according to the responses he received.

40. In my judgment his actions are not to be characterised as unfair or unreasonable. It was a judgment made in good faith while acting consistently with his duties. Even if he had decided to declare to Mr Masood that a debt was due to one of the Applicants, it would have been reasonable for him to seek further and better information about the identity of the creditor. This was evidence that Mr Masood was shy in providing. In the oral judgment I provided on 5 March 2020 I found that "Mr Masood was able during cross examination to explain how the orders were made and substantiate the invoices or delivery notes in evidence". I found that the "statements of account gave further substance to the claim. As with many small businesses the supply terms did not operate in accord with the written documentation. There was a need to adapt according to operational requirements." This was new evidence and something Mr Masood was able to demonstrate after his evidence was tested in cross examination. The evidence given by Mr Masood was not about the importance of the terms of the Agreement or how it was followed to the letter, quite the opposite. Mr Masood

explained that the terms of the Agreement was not followed, that the supply requirements changed from time to time, how he answered queries and took orders via WhatsApp.

41. This is evidence not before presented to Mr Patel, but I found credible. Mr Patel gave evidence and I found that he "was honest, straight forward and in my judgment, he correctly made the concession that a sum was due". Mr Patel should not be criticised because the Court reached a conclusion that Mr Masood gave credible evidence.

42. In my judgment there was a genuine dispute about the management services proof of debt. Mr Patel accepted in cross-examination that some management services had been provided in the early days, but the books and records failed to demonstrate anything further. Mr Patel required a paper trail. In my judgment an office holder is entitled to rely on the Company's accounts and probe the accounts of a creditor. There is nothing unreasonable or unfair in relying on the statutory books and records. The fact that the court found on the balance of probabilities that management services had been provided does not of itself make the decision of Mr Patel unreasonable or irrational.

Conclusion

43. In my judgment the Notice of Rejection and the reasons provided for rejection must be considered holistically. If, as Miss O'Sullivan sought to do, each ground of rejection is picked apart, in an attempt to demonstrate unreasonable and unwarranted conduct, the overall picture is lost. On the information available at the time Mr Patel was justified in rejecting the claim for both Applicants for the supply of meat. He was justified in seeking clarification, requiring a paper trail, checking the accounts of the proving creditor to understand which company had made the relevant supply, if they supplied at all, probing the creditor on specific issues, asking the director of the Company and analysing the best he could the Company records. This represents reasonable and expected behaviour of a competent office holder. Much has been made of a transcript of an interview conducted by Mr Patel. It is said that leading questions were asked of Mr Ijaz. It is said that Mr Patel sought to extract from Mr Ijaz concerns about the Agreement. Yet Mr Masood did not call Mr Ijaz to support his case. Mr Patel was cross-examined on the document and, in my judgment, the charges of unfair treatment arising from the interview are unsustainable.

44. There was a clear conflict of evidence between the Company director and the creditor Applicants. Mr Patel had to make a choice in respect of one or two issues. The intervention of Mr Sheikh acted as a disrupter to what would have been a less contentious challenge to a proof of debt. Mr Sheikh has suffered an adverse costs order as a result.

45. In my judgment Mr Patel having acted as I have described in the teeth of a highly contentious dispute arising from an unfair prejudice petition, acted appropriately and with integrity. His approach to the hearing was as expected. He adopted a neutral position. In my judgment it would be wrong to characterise the actions of Mr Patel as "irrational" or "unreasonable". This is not a "special case" and there is no "good reason" for an order "otherwise" than the usual order provided by Rule 14.9(2) of the Insolvency Rules 2016.

46. The costs of the Applicants' successful appeal are to be paid out of the assets in the usual way but the Applicants shall pay the costs associated with the argument of costs incurred by the First Respondent.

47. I invite the parties to submit an agreed order.