The consequences of funding - Springing into action to recover costs

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Introduction

Standing behind a party to litigation is sometimes a funder who will benefit from any success of that party's action. The funder can sometimes be the person who has ultimate control of the party, and therefore the party's actions in the litigation, such as a director or the majority shareholder of a company.

In the recent case of *Topalsson GmbH v Rolls Royce Motor Cars Ltd* [2024] EWHC 297, the High Court was asked to grant an order for disclosure of information relating to the funding of proceedings, in support of a potential non-party costs order against the claimant's director and majority shareholder, and other unknown funders.

The decision re-affirms the test for ordering disclosure in support of a non-party costs order and considers how this test is affected if giving such disclosure would result in a breach of the law of another jurisdiction, either civil or criminal.

Background

The defendant, Rolls Royce Motors Cars ("RRMC"), was the successful party against the claimant, Topalsson GmbH ("Topalsson") in litigation arising out of the development and supply of software for a Rolls Royce car. Topalsson was ordered to pay €5 million in damages plus interest, in addition to 90% of RRMC's costs.

Topalsson failed to pay those amounts because, it said, its insurers had wrongfully failed to indemnify it for the judgment sum. Topalsson brought a claim against those insurers in Germany.

In the meantime, RRMC thought it might have a better chance of recovering the sums due to it if it pursued Topalsson's funders. However, RRMC did not know for sure who was funding the litigation and what the terms of any funding arrangements were. It therefore first applied to the court seeking disclosure from Topalsson on those points.

Read the full article.

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