

Neutral Citation Number:[2021] EWHC 3748 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 18 June 2021

BEFORE:

MRS JUSTICE COCKERILL

BETWEEN:

(1) DISMATRIX SPC
(2) ASYNDETON
(3) POLYSYNDETON

Claimants

- and -

EQUITI CAPITAL UK LIMITED

Defendants

MR N MEDCROFT QC (instructed by Mishcon de Reya LLP) appeared on behalf of the
Claimants

MR A GEORGE QC (instructed by Linklaters LLP) appeared on behalf of the Defendant

JUDGMENT
APPROVED

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1. MRS JUSTICE COCKERILL: I am not going to reserve costs on this as I indicated. I did think quite carefully about this when it was suggested that that be done rather than maintaining this hearing. I have listened carefully to what Mr Medcroft has to say; I am not persuaded.
2. I think it is undesirable to roll over the consideration of costs in this case. You have two possible destinations for it to go in purely practical terms, one is the CMC. The CMC is plainly going to have plenty to deal with, as argument this morning has demonstrated. I would imagine you are going to be quite tight on time. The argument this morning has also demonstrated that this costs debate is capable of taking up quite a lot of time.
3. I do not think it is proportionate to schedule another hearing just for costs. It would not be in line with the overriding objective, unless it was apparent that there was a likelihood that court would be better placed to determine where the incidence of costs should fall at a later stage. I am not persuaded that the court would be in a better position at a later stage or a materially better position.
4. I do not accept that the withdrawal of the application is all about the motion to quash or can logically be seen to be all about the timing of the motion to quash. The application itself was made against the background of a number of depositions in relation to which the process is still ongoing. Yes, the key one is the one which is the subject of the motion to quash or compel, but the other evidence continues to come in and the process continues to happen and a number of the things which were said to justify the stay remain the case.
5. Secondly, the question of listing, I do not think that is a reason because the position in relation to the stay is that the application was made at the absolute last minute and the expectation that the court might have been able to get matters on earlier, reschedule at short notice, was an unrealistic one.
6. Finally, when it comes to the question of what would have happened had there been an application, it seems to me there must have been within the decision to withdraw a degree of acceptance that this was a somewhat difficult application against the

background which I have indicated that the reason given for the stay application was to accommodate the 1782 process. What was sought was a three month stay which had all sorts of practical issues attached to it when one looked at the 1782 process, when the application for the stay was, as I say, made quite late on within the process, sometime after the 1782s were issued, and the 1782s themselves were issued just after the parties had agreed a date for the CMC and in circumstances where there was always going to be a real risk that the 1782 process would run on a separate timetable and a three month delay was not going to be realistic.

7. The reality of the situation is that, as I have said in the course of argument, if you are going to do these sorts of things, you need to get on with them and you certainly should not agree to the scheduling of the CMC at a particular date if you are about to do something and you think that is going to have an impact on the process. The normal way in which these things are dealt with, however, is that foreign evidence-gathering runs on a separate timetable effectively and, unless there is some particularly key form of evidence, the court here would not normally await the outcome.
8. The way that this would normally be dealt with is the way that I anticipate it will be dealt with now, which is that the existence of the 1782 process is simply a factor which the parties have to bring into account when they deal with the CMC and the various steps which they have to deal with to trial. The possibility of amendments arising out of disclosure is always there in relation to disclosure that you get over here. So the fact that 1782 was going on was never likely to be a good reason for a case management stay.
9. The result therefore is I am not prepared to reserve the costs. I do not think any other court is going to have better visibility. It is a waste of court time and effort to roll it over. It would be likely to impinge either on the court's diary or on the conduct of the CMC. It will be better to get on with it.

(After further submissions)

10. The defendants get their costs to be summarily assessed. A significant haircut has to be had in relation to this. There are a number of points. I do think there is a degree of over-personing. I do think that the partner rates and then the managing associate rates and in fact looking most of the way down you are too high, not by reference to the old rates but by reference to the kind of rates which are likely to come in following the review, which will not see anything like £850 being recoverable. I think that is too high.
11. Then you have for an application of this sort, high figures for attendances on clients, you have high figures for attendances on opponents, including over two hours of partner time. A total of, for attendances on opponents, 32 hours. Then when we come of course to the work on documents, simply an astonishing, barely credible amount. Eight hours and 30 minutes might be understandable for actually writing the witness statement, but when there is the rest of the 61 hours there, no. Then when it comes to fees of counsel, one never likes to be rude about this, by the time we come to the hearing today, delightful as it has been to see both of you, I am not really sure that this is an application which one would certify as fit for leading counsel, so you will be taking a bit of a hit there.
12. Taking it all in the round it comes down to £50,000.

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