



Neutral Citation Number: [2022] EWHC 1513 (Comm)

Case No: CL-2018-000297

(Consolidated with CL-2018-000404 & 000590, CL-2019-000487, CL-2020-000369)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 June 2022

Before :

Mr Justice Andrew Baker

Between :

Skatteforvaltningen	<u>Claimant</u>
- and -	
Solo Capital Partners LLP & Others	<u>Defendant</u>

Laurence Rabinowitz QC and Abra Bompas (instructed by Pinsent Masons LLP) for the
Claimant

Andrew Onslow QC, Tom De Vecchi and Sophia Dzwig (instructed by DWF LLP) for the
DWF Defendants

Hearing date: **10 June 2022**

RULING
(Approved Transcript)

Ruling by **MR JUSTICE ANDREW BAKER**

1. My order of 27 April 2021 dismissed all of SKAT's claims. The Court of Appeal order dated 4 March 2022, with a slip rule correction made on 7 March 2022, allowed SKAT's appeal except against ED&F Man. There were two issues at what we called the revenue rule trial, and again on appeal: (i) whether, subject to (ii), SKAT's claims are inadmissible under Dicey rule 3; (ii) whether, since these proceedings were brought during the currency of the Brussels/Lugano regime in this jurisdiction, Dicey Rule 3 is inapplicable to or overridden for defendants domiciled in Brussels/Lugano territory.
2. By the Court of Appeal order, the DWF defendants, together with the Sanjay Shah defendants, Messrs Knott and Hoogewerf, and the SMB defendants, were ordered to pay SKAT's costs of the first issue on appeal and below, such liability to be a joint and several liability for all of those costs and such costs, if not agreed, to be subject to detailed assessment on a standard basis now, not only at the end of the proceedings, save that detailed assessment was to be stayed, and therefore in the event it has been stayed, if any defendant sought permission to appeal to the Supreme Court. That stay has arisen in the event because the Sanjay Shah defendants have sought permission to appeal the substance to the Supreme Court. That application has not yet been determined. Under the terms of the Court of Appeal order the stay will continue, that is to say the stay on any detailed assessment, until either the permission to appeal application is dismissed or the appeal is finally determined if the application for permission is granted.
3. The DWF defendants and the other defendants subject to that costs liability were ordered, again as a joint and several liability for the full amount, to make a payment on account of £2.2 million by 1 April 2022, comprising £1.6 million on account of the costs of the first issue on appeal and £600,000 on account of the costs of that issue in this court.
4. In contrast to the order for detailed assessment, the Court of Appeal did not order that the making of the payment on account was to be deferred if permission to appeal the substance was sought by any defendant from the Supreme Court. However, the Court of Appeal order went on to provide that the order for a payment on account: “... *shall be subject to any further order made by the Court as a result of any stay application by any of the Defendants. The Defendants have liberty to apply to a Judge of the Commercial Court to seek a stay of their payment obligations under paragraphs 15, 17 and 18.*” Paragraphs 15 and 17 were the paragraphs dealing with the payment on account, while paragraph 18 dealt with repayment to SKAT of payments on account of costs generally arising out of my dismissal of the claims and is not relevant for today's purposes.
5. The DWF defendants now apply pursuant to that liberty, by application notice dated 8 April 2022, for an order that their obligation to make the payment on account of costs ordered by the Court of Appeal be stayed until either the conclusion of the Sanjay Shah defendant's application (and appeal, if permission be granted by the Supreme Court) or the conclusion of the proceedings as a whole.

6. However, as Mr Onslow QC fairly recognised, the only reason why the former – the Supreme Court proceedings – is proposed as a possible end point for a stay is that, so it is said, a successful appeal by the Sanjay Shah defendants may operate in law or in practice to bring the proceedings to an end. So in reality, the application is for the payment on account obligation to be stayed until the conclusion of the proceedings as a whole, but recognising that that terminal point, if there is no amicable resolution, could yet be, relatively speaking, sooner rather than later if the proceedings are brought to a halt as a result of a decision by the Supreme Court rather than after a final trial in this court.
7. The DWF defendants say the stay, if ordered, should be unconditional, as their primary contention, but in the alternative they recognise that they would be in difficulty resisting a condition of payment, if the court felt that appropriate, requiring them to pay 25% of the payment on account that has been ordered as a condition of any stay.
8. Notwithstanding the language used by the Court of Appeal in the Court of Appeal order, Mr Onslow QC for the DWF defendants accepts that the relevant jurisdiction which I have, and which the liberty to apply in truth merely confirmed, is to order a stay of execution under CPR 83.7. That requires the court to be satisfied that “(a) *there are special circumstances which render it inexpedient to enforce the judgment or order; or (b) the applicant is unable from any reason to pay the money*” (see CPR 83.7(4)). The DWF defendants do not rely on paragraph (b), inability to pay.
9. The ground for the application stated in the application notice is that it would be just to stay the payment obligation in question: “... *considering the unique nature of these proceedings, the burden that has been placed on [the DWF defendants] in defending the proceedings to date and the burden that is likely to be placed on them in defending the proceedings going forward.*”
10. The witness statement in support, a sixth witness statement of Mr Fineman of DWF, puts it in overlapping but possibly slightly different or wider terms, saying the application is on the basis that: “... *it is just and appropriate for the Interim Payment Orders to be stayed on the terms suggested because of the following factors in combination: (i) the lack of any prejudice to SKAT; (ii) the unique nature of the proceedings; (iii) how they have been conducted to date; and (iv) the (very) substantial remaining aspects of the case.*”
11. The starting point, it seems to me, must be a proper understanding of what the Court of Appeal order has determined and what any application under CPR 83.7 therefore requires. The Court of Appeal order determined, adversely to the DWF defendants and to the other defendants rendered liable for the costs in question that:
 - the question whether SKAT should be paid some or all of its costs of the revenue rule issues on appeal and below in any event should be decided by the Court of Appeal and not be remitted to this court in the light of the outcome of substance on appeal;
 - SKAT *should* be paid some of those costs in any event, to the extent reflected in the Court of Appeal order, that is to say irrespective of whatever may eventually be the final outcome of the proceedings;
 - the recoverable amount of those costs should be determined and paid now, not only at the end of the proceedings;
 - there should be a payment on account of £2.2 million;

- that payment should be made by 1 April 2022;
 - the DWF defendants and the other relevant defendants should all be jointly and severally liable for the full amount of both (a) the costs agreed or assessed to be recoverable, and (b) in the meantime the £2.2 million to be paid on account; and
 - the detailed assessment of the final recoverable amount, if not agreed, should be deferred, but the payment on account should not be deferred, if an application was made to the Supreme Court for permission to appeal, until that application and any resulting appeal had been determined.
12. The power I have under CPR 83.7, as Mr Onslow QC rightly acknowledges, is not to interfere with, revisit or extend time in relation to any of that. It is, rather, to prevent SKAT from taking steps by way of execution of the judgment debt now owed to it thereunder because “*special circumstances ... render it inexpedient to enforce*” the relevant provisions of the Court of Appeal order.
13. In my judgment, with only one exception that requires more than a moment’s consideration, all of the matters invoked by the DWF defendants as special circumstances for the purposes of CPR 83.7 are nothing of the sort. They are, rather, reasons why it may have been at least arguable that the modern trend in cases where substantive preliminary issues have been ordered and tried, that the outcome thereof, if it is not wholly dispositive of the claim, is nonetheless treated as a separate event in itself the subject of costs payable immediately, should not have applied in this instance. In other words, they are factors that, if they had force at all, went to the various questions all determined by the Court of Appeal adversely to the DWF defendants, and do not tell one way or the other as to the justice or injustice of allowing SKAT now to take steps by way of execution to enforce the resulting judgment debt that arises from the Court of Appeal's decision of those issues against the defendants.
14. The one factor that requires at least a moment or two of thought is this. Mr Onslow QC on behalf of the DWF defendants emphasises SKAT’s indicated intent to look primarily to the DWF defendants for the discharge of the payment on account in circumstances where, having been given an opportunity collectively to make proposals, the DWF defendants, together with the other defendants liable, have neither made any payment to SKAT in respect of the payment on account that has been ordered nor provided to SKAT any proposals for its discharge in some proportions as between themselves that they might have agreed.
15. Mr Onslow QC therefore presses on the court as an unfairness that if SKAT is free to levy execution on one or more of the DWF defendants, and if by doing so SKAT makes a recovery of some or all of the payment on account that has been ordered, that will incentivise the defendant or defendants thus caused to discharge their liability now to pursue the other joint obligors in a way in which they are not incentivised for so long as no payment is made to SKAT.
16. Ultimately however, though I understand the degree to which it may be perceived by the party who pays first that doing so and chasing their co-obligors is a particular burden that has fallen on them by their choosing or being forced by execution to pay first, in my judgment that is a consequence that is an inevitable corollary of the ruling that the liability should be joint and several and that payment should be made now.

17. It seems to me that the wider enormity, complexity and style (on SKAT's part) of this litigation does not affect the character of that factor invoked by Mr Onslow QC. It does not render it inexpedient for SKAT to enforce if, as the Court of Appeal has decided, it is appropriate in the first place that the relevant liability should be a joint and several liability, not a liability only for some percentage share, and is a liability to make a payment by 1 April 2022 irrespective of anything that might happen thereafter, including whether there was an application to the Supreme Court, or whether there might in the future be costs orders in favour of the paying party that, had they existed prior to the 1 April 2022, could have been set off, or whether ultimately the case goes against SKAT in such a way that there are costs orders in favour of any party that has made payment that might dwarf, as well they then might, any payment made in the meantime in respect of this payment on account.
18. For those reasons, I am not satisfied that the unusual features, it may be unique in other senses, of this litigation as a whole amount or give rise to a special circumstance rendering it inexpedient for SKAT to be able to levy execution, as it may be advised, in the normal way, in respect of the judgment debt created by the Court of Appeal order in respect of the payment on account that ought to have been paid now some two months ago.
19. For those reasons, this application is dismissed.